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PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY AND
FOR THE INTERNATIONAL TRIBUNAL FOR
THE LAW OF THE SEA

REPORT OF THE PREPARATORY COMMISSION, UNDER PARAGRAPH 11 OF RESOLUTION I OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, ON ALL MATTERS WITHIN ITS MANDATE, EXCEPT AS PROVIDED IN PARAGRAPH 10, FOR PRESENTATION TO THE ASSEMBLY OF THE INTERNATIONAL SEABED AUTHORITY AT ITS FIRST SESSION

VOLUME IX

Conference room papers of Special Commission 1

best copy available

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LOS/PCN/SCN.1/1984/CRP.1
20 March 1984

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL SEA-BED AUTHORITY AND FOR THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
Second session

Provisional agenda for Special Commission 1

1. Opening of the meeting.

2. Adoption of the agenda for the session.

3. Organization of work.

4. Consideration of the subject-matter contained in resolution I, paragraph 5 (i) of the Third United Nations Conference on the Law of the Sea.

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LOS/PCN/SCN.1/1984/CRP.1
20 March 1984

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Second session

Programme of work for Special Commission 1

(Developing Land-Based Producer States)
(Proposal of the Bureau of Special Commission 1)

1. Projection of production from the Area

   1.1. At what time the production from the Area would take place;

   1.2. Which minerals would be produced.

2. Assessment of relationship between production from the Area and existing land-based production.

   2.1. Framework how the assessment would be carried out;

   2.2. Necessary statistical data and any other information;

3. Identification, definition and measurement of effects on developing land-based producer (LBP) states.

   3.1. Necessary statistical data and any other information;

   3.2. Effects on: a. Price and/or volume of exports and export earnings
   b. Economy as a whole

   3.3. Catalogue of categories of developing LBP states

      a. affected

      b. seriously affected

      c. most seriously affected.

4. Determination of the problems/difficulties that would be encountered by the affected developing LBP states.

/...

5. Formulation of measures to minimize problems/difficulties of affected developing LBP states
    - 5.1. Measures for necessary economic adjustment
        - a. Measures through existing international organizations;
        - b. Measures to be taken by the Authority
        - c. Criteria for eligibility for assistance through such measures;

        - d. Requirements and operations of such measures.
    - 5.2. System of compensation, other than compensation fund
        - a. Such systems of existing international organization;
        - b. Such systems as the Authority may consider establishing;
        - c. Criteria for eligibility for assistance from such systems;
        - d. Requirements and operation of such systems.
    - 5.3. Studies on the establishment of a compensation fund
        - a. Criteria for eligibility for assistance from the compensation fund;
        - b. Requirements and operation of such fund.
    - 5.4. Any other measures.
6. Recommendations for the consideration of the Authority
    - 6.1. Measures to minimize problems/difficulties of affected developing LBP states.

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LOS/PCN/SCN.1/1984/CRP.3
27 March 1984

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
Second session

Special Commission 1

List of Issues to be Dealt With Under the Programme of Work

(Proposals by the Bureau)

1. Projection of production from the Area.

1.1 At what time the production from the Area would take place.

Issues

(i) Monitoring the pioneer activities in the Area.

(ii) To what extent is the timing of sea-bed production relevant for the purpose of the Special Commission?

(iii) Should the issue of the timing of sea-bed production be approached through alternative assumptions, e.g., year 1995, 2000, 2005, etc.?

(iv) Should the Special Commission deal with impacts that may be felt before sea-bed production? In what ways?

1.2 Which minerals would be produced.

Issues

(i) Should the Special Commission deal with each of the minerals contained in polymetallic nodules? (There are trace elements of about 50 minerals in polymetallic nodules.) Should the Special Commission limit itself to the minerals which appear to be economically exploitable? If so, should it limit itself to copper, nickel, cobalt, manganese, or these four minerals plus molybdenum, or these four minerals plus molybdenum, vanadium and titanium? Should the Special Commission also study minerals other than polymetallic nodules?

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(ii) Since the production of polymetallic nodules in linked to the future consumption of nickel, how should the Special Commission make projection of future consumption of nickel? What time period in the future? Should the Special Commission deal with similar projection of the future consumption of the other minerals mentioned above? How?

(iii) How should the Special Commission deal with future land-based production of the above minerals?

- Monitoring the status of land-based production?

- At the present time, what should the Special Commission monitor? Trend of production over a number of past years? Trend of production over a number of future years? Exploration efforts, mine expansion plans and mine development plans at the current time? Current estimates of reserves - grade, tonnage, cost of production? Current estimates of resources - grade, tonnage, cost of production? Changes in the above over the next few years? Should the Special Commission deal with agreed, uniformly applied definitions, methods of measurement and statistical reporting of the above?

2. Assessment of relationship between production from the Area and existing land-based production.

2.1 Framework how the assessment would be carried out.

Issues

(i) Should the assessment be carried out on a mineral-by-mineral basis?

(ii) How should the framework of assessment be constructed? Should it be a short-term, medium-term or long-term framework? What should be the nature of the framework? World supply-demand-price determination? Should there be a distinction between controlled Market and open market for minerals? How should this distinction be made? How should the working of the controlled market be studied? How should the changes in the working of the controlled market resulting from sea-bed production be studied? How should the working of the open market be studied? How should the changes in the working of the open market resulting from sea-bed production be studied?

(iii) How should the framework incorporate capabilities of isolating the effects of factors other than sea-bed production?

2.2 Necessary statistical data and information.

Issues

(i) What are the necessary statistical data and information? How should they be collected? From published literature? From relevant States? What will be the modalities of collecting data and information from States? How should the data and information be processed in accordance with the agreed framework above?

3. Identification, definition and measurement of effects on developing land-based producer States?

3.1 Necessary statistical data and information.

Issues

(i) What are the necessary statistical data and information? How should they be collected? If from States should there be any independent substantiation? How?

3.2 Effects on: a. Price and/or volume of exports and export earnings
b. Economy as a whole

Issues

(i) Should the effects be considered on a State-by-State basis?

(ii) How should price, volume of exports, export earnings be defined and measured?

(iii) What should be the indicators of effects on the economy of a developing land-based producer State? How should these indicators be defined and measured? Is quantitative measurement possible in all cases? If not, how should the Special Commission measure the effects?

(iv) Should all the above effects be combined in a kind of index? If so, how?

3.3 Catalogue of categories of developing LBP States

a. affected
b. seriously affected
c. most seriously affected

Issues

(i) How should this categorization be carried out? What should be the criteria? Threshold level of effects? How should the threshold level be established? Should the threshold level vary among

/...

different groups of developing LBP States, e.g. least developed developing newly industrialized, etc.?

4. Determination of the problems/difficulties that would be encountered by the affected developing LBP States.

Issues

(i) What are the problems/difficulties? Are reduction in price and/or volume of exports and export earnings per se problems/difficulties? If not, should the Special Commission concentrate on problems/difficulties associated with the above?

(ii) Is there a need to measure these problems/difficulties? Quantitatively?

5. Formulation of measures to minimize problems/difficulties of affected developing LBP States.

5.1 Measures for necessary economic adjustment.

Issues

(i) What should be the definition of economic adjustment, necessary economic adjustment?

(ii) What are the existing measures of international organizations? Can these be adaptable for the purpose of the Special Commission? In what ways? If adaptable, what should be the modalities of co-operation of the Authority with the international organizations? What should be the responsibilities of the respective organizations? How should these responsibilities be carried out?

(iii) In the case the Authority promotes measures for economic adjustment what should be the nature of these measures? How should these measures be implemented? What will be the requirements (financial, institutional, etc.) of these measures?

(iv) What should be the criteria for an affected developing LBP State to be eligible for assistance through the above measures? To what extent these measures will minimize the problems/difficulties of affected developing LBP States?

5.2 System of compensation, other than compensation fund.

Issues

(i) What should be compensated for?

(ii) What are the existing systems of international organizations? Can these be adaptable for the purpose of the Special Commission?

/...

In what ways? If adaptable, what should be the modalities of co-operation of the Authority with the international organizations? What should be the responsibilities of the respective organizations? How should these responsibilities be carried out?

(iii) In the case the Authority establishes a system of compensation, what should be the nature of this system? How should this system be implemented? What will be the requirements (financial, institutional, etc.) of this system?

(iv) What should be the criteria for an affected developing LBP State to be eligible for assistance through the above system? To what extent this system will minimize the problems/difficulties of affected developing LBP States?

5.3 Studies on the establishment of a compensation fund.

Issues

(i) What should be compensated for from such a fund?

(ii) What will be the sources of funds? Should the Special Commission estimate availability of funds from various relevant items mentioned in article 171? How? What are the measures to attract contributions to a compensation fund? How should the fund operate?

(iii) What should be the criteria for an affected developing LBP State to be eligible for assistance through the above fund? To what extent this fund will minimize the problems/difficulties of affected developing LBP States?

5.4 Commodity arrangements or agreements.

Issues

(i) Commodity arrangements or agreements as mentioned in article 151 para. 1.

5.5 Other measures.

Issues

(i) What are other possible measures? Several measures mentioned in part V of WP.1? Can the sea-bed miners take some measures to minimize the problems of developing LBP States?

(ii) What are the pros and cons of these measures? How should these measures be evaluated in terms of effectiveness. extent of minimization of problems of developing LBP States, financial, institutional and other requirements, operational modalities, etc.?

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6. Recommendations for the consideration of the Authority.

Issues

(i) What will constitute these recommendations?

(ii) Preparation of final report.

(iii) Should the Special Commission include recommendations/suggestions regarding follow-up activities by the Economic Planning Commission/Authority?

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LOS/PCN/SCN.1/1984/CRP.4
3 April 1984

ORIGINAL ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
Second session

Some of the items on which the Secretariat is requested to provide data and information for the purposes of study by the Special Commission 1

(Proposed by the Bureau)

Since certain basic information is essential for the work of the Special Commission, the Special Commission wishes to have data and information at its disposal at its next session on the following items:

1. Minerals that may be produced from the Area (WP.1, para. 4)

   - Listing of minerals
   - Type of statistics on minerals

     Sources of statistics

2. Land-based producer States that may be affected (WP.1, paras. 18-21)

   - Current developing LBP States

3. Significance of the minerals in the economy of the LBP States (WP.1, paras. 15-17)

   - Percentage of GNP or total exports accounted for by the minerals in the past, and at present

/...

4. World mineral market (WP.1, Sec. II)

   - Production
   - Consumption
   - Exports
   - Imports
   - Price
   - Direction of trade

5. Information on existing international or multilateral economic measures which could be of relevance to the work of the Special Commission (WP.1 paras. 31-33, 40)

   - Brief description
   - Purpose, operation and limitations

LOS/PCN/SCN.1/1984/CRP.4/Corr.1
11 April 1984

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
Second session

Some of the items on which the Secretariat is requested to provide data and information for the purposes of study by the Special Commission 1

(Proposed by the Bureau)

Corrigendum

Paragraph 2, line 1:

Should read:

Developing land-based producer States that may be affected (WP.1, paras. 18-21)

Paragraph 3, line 1

Should read:

Significance of the minerals in the economy of the developing LBP States

LOS/PCN/SCN.1/1984/CRP.4/Add.1
4 April 1984

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
Second session

Some of the items on which the Secretariat is requested to provide data and information for the purposes of study by the Special Commission 1

(Proposed by the Bureau)

The Secretariat will be requested to transmit to States a Note Verbale requesting them for statistics on the following items:

- production
- consumption
- imports
- exports
- present production capacity
- plans for and projection of future production

of copper, nickel, cobalt and manganese for a 10 year period. The States are urged to respond as expeditiously as possible. These notes will be sent to the Permanent Missions in New York, but those delegates who would like to receive directly a copy of this Note Verbale should communicate their names to the Secretary of the Special Commission before the end of this session.

The Secretariat will be requested to bring up-to date and amplify the data included in the tables contained in Annex III of the document of the Third United Nations Conference on the Law of the Sea, A/CONF.62/L.84.

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LOS/PCN/SCN.1/1984/CRP.4/Add.1/Corr.1
11 April 1984

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
Second session

Some of the items on which the Secretariat is requested to provide data and information for the purposes of study by the Special Commission 1

(Proposed by the Bureau)

Corrigendum

Paragraph 1 should read:

The Secretariat will be requested to transmit to States a Note Verbale requesting them for statistics, on a voluntary basis, on the following items:

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LOS/PCN/SCN.1/1985/CRP.5
13 March 1985

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Third session

OPENING STATEMENT OF THE ACTING CHAIRMAN OF SPECIAL COMMISSION 1

It is an honour for me to welcome you to the first meeting of Special Commission 1 at the third session of the Preparatory Commission. As some of you may already know, Ambassador Hasjem Djalal, the Chairman of our Special Commission, was here during the Group of 77 meeting, but unfortunately for us, he will not be able to be here in Kingston for the next few days to lead our Special Commission, because he has been given other assignments by his Government. He very graciously asked me to chair the meetings of our Special Commission, and the Bureau concurred. I pledge to do my best to earn the confidence which the Chairman and the Bureau have placed in me.

The Special Commission was established by the Preparatory Commission at the conclusion of its resumed first session, and since then we met during the second session and at the Geneva meeting of the Preparatory Commission. Over the past two series of meetings we have discussed a number of issues, came to conclusions, although on a tentative basis, on several matters, and made progress in our work in various areas. Today, at the beginning of our third series of meetings, I see in this Conference Room many delegations which were not present during our past deliberations. This is because of the most commendable trust the international community has demonstrated with regard to the Convention; since our last regular session, about 30 countries have signed the Convention. Today we have with us delegations from these new signatories.

I feel that this is a vantage point where we can briefly talk about the evolution of our work, about the developments that took place in our deliberations during the past. I also feel that such a summary of our past work will be extremely useful for our friends who have been with us during the past sessions, because this may help them in refreshing their memory and taking stock of our work.

Our Special Commission has been mandated to undertake studies on the problems which would be encountered by developing land-based producer States likely to be most seriously affected by production of minerals derived from the Area, with a view to minimizing their difficulties and helping them to make the necessary economic adjustment, including studies on the establishment of a compensation fund, and to submit recommendations to the Authority thereon. In studying the problems of developing land-based producer States, it is necessary to know; first, which minerals would be produced from sea-bed sources in the Area; second, how the introduction of the minerals from this new source would affect the existing land-based sources; third, what this effect would be and which developing States would be affected; fourth, what problems or difficulties, in connection with the effects, these developing States would encounter; and finally, what could be done to minimize these difficulties. This logically structured framework is reflected in the programme of work of our Special Commission which is contained in document LOS/PCN/SCN.1/1984/CRP.2. After some discussion during the second session, we elaborated on this programme of work by presenting a list of issues under each of the above items. This list, which gave us a better idea of the work of our Special Commission, is contained in document LOS/PCN/SCN.1/1984/CRP.3.

Equipped with such a detailed outline, as it were, of our work we proceeded with the deliberations on the list of issues. We came to the tentative conclusion that although there are several types of minerals which are known to occur in the sea-bed, our Special Commission would concentrate its work on polymetallic nodules, at the same time keeping in view the trends and developments regarding minerals other than polymetallic nodules, e.g., polymetallic sulphides, cobalt-rich manganese crusts, etc.

With respect to the polymetallic nodules themselves, we came to the tentative conclusion that we should deal with the metals which appear to be economically exploitable, namely, copper, nickel, cobalt and manganese, although we will keep in view the trends and developments regarding other metals contained in polymetallic nodules.

The introduction of these four metals from the sea-bed source in the future is expected to affect the land-based producers. This effect will be felt through the supply-demand-price mechanism. We need to investigate this mechanism in order to identify and measure the possible effects. This is a very complex task, and we have so far spent very little time on this matter. The Secretariat has produced a paper LOS/PCN/SCN.1/WP.4 which addresses this issue.

Assuming that the land-based producers will be affected by sea-bed production, we need to know the nature of these effects. During the Geneva meeting there was an illuminating discussion on this subject, and in accordance with the provisions of articles 150 (h) and 151 (10), we agreed to concentrate on the effects on the export earnings or the economies of developing land-based producer States.

During the Geneva meeting we also felt that the most practical way of identifying and measuring the effects is on the basis of the relevant statistics. This quantitative approach led us to look for statistically measurable indicators representing export earnings or economies. A possible indicator representing export earnings, as we discussed, could be the value of exports from a developing land-based producer State of one or more of the four mineral commodities mentioned earlier. A possible indicator representing the economy could be the value of production of one or more of the four mineral commodities concerned in a developing land-based producer State.

Once we dealt with the effects, the most important question facing us was: which are the developing land-based producer States that are likely to be most seriously affected. We had an extensive discussion during the Geneva meeting on this question. We felt that those developing land-based producer States which are dependent on the exports of the four mineral commodities concerned for their export earnings, or those which are dependent on the income from these four mineral industries for their economies, are likely to be most seriously affected. However, we felt the need for concrete formulations with respect to export earnings or economies. I am pleased to say that at this session we have in front of us a paper prepared by the Secretariat dealing with concrete formulations, document LOS/PCN/SCN.1/WP.3.

Once the effects are felt, developing land-based producer States will encounter problems. An attempt at identifying these problems in a preliminary fashion was made in a Working Paper prepared by the Secretariat, LOS/PCN/SCN.1/WP.1. These problems will relate to reduced export earnings, reduced gross domestic product, reduced employment, reduced government revenue, reduced investible funds, etc. The problems may also be of a social or political nature, rather than economic. However, we had very little discussion on this matter, and perhaps during this session we can address this matter in depth.

Finally, with regard to possible measures to minimize these problems we had a preliminary discussion on certain existing measures of international or multilateral organizations which we felt would be of relevance to our work. These measures are of various types. Brief descriptions of six examples were presented in a paper produced by the Secretariat, document LOS/PCN/SCN.1/WP.2/Add.2. Broadly speaking, these examples relate to measures falling under the categories of structural adjustment assistance, assistance for the maintenance of viable production and export capacity, promotion of trade, commodity agreement, buffer stocking and commodity development measures, and compensatory measures for short-term export shortfalls. However, we need to have an extensive discussion about what particular features of these existing measures can form a basis for the remedial measures our Special Commission is looking for in our particular context.

I have tried to present to you a brief summary of the evolution of our work, and also an idea of what stage we are in at this moment in our work. I have touched upon the main areas and issues. One fact that emerges from the above is that for our work there is a tremendous need for relevant data and information. We highlighted this need at the end of the second session and requested the Secretariat to present necessary data and information. During the Geneva meeting the Secretariat responded with a number of papers, documents LOS/PCN/SCN.1/WP.2 and Adds.1 and 2. In these documents we have a vast amount of data and information on minerals that occur on the sea-bed, metals that could be produced from polymetallic nodules, types and sources of statistics, and production, consumption, exports, imports and prices of cooper, nickel, cobalt and manganese during the past ten years. We also have information, as I mentioned earlier, on several existing international or multilateral economic measures. The Secretariat has given us these data and information on the basis of published sources. Because data and information are of particular importance to our work, we also requested the Secretariat to send a note verbale to all States Members of the United Nations requesting them to make available to the Secretariat statistics on various items. I am pleased to inform you that by the end of November 1984, about 25 States had responded to this note verbale. At a later time during this session the Secretariat will give us these responses, in tabular form, in document LOS/PCN/SCN.1/WP.2/Add.3. I would encourage all delegations to respond to the note verbale. During the Geneva meeting we also came to a conclusion that collection and presentation of data and information will be an on-going task, and we drew the Secretariat's attention to the need for such an on-going exercise.

As you can see, we have made quite appreciable progress in our work; at the same time you are aware of the tasks to be completed during this session and future sessions. I hope I have been able to give you an idea of what we have done and what we need to do. I am confident that if we all work hard during this session we can deal with a number of outstanding issues and come closer to our ultimate goal, which is making recommendations to the Authority. I thank you.

LOS/PCN/SCN.1/1985/CRP.6
28 March 1985

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1

SIX-POINT PROPOSAL BY THE DELEGATION OF PAKISTAN FOR OVERCOMING OR MINIMIZING THE DIFFICULTIES WHICH MAY BE ENCOUNTERED BY DEVELOPING LAND-BASED PRODUCER STATES ON COMMENCEMENT OF SEA-BED MINING OF POLYMETALLIC NODULES

INTRODUCTION

1. Pursuant to resolution I, paragraph 5 (i) and paragraph 9, the Preparatory Commission is required to undertake studies on the problems which would be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals from the sea-bed; and to formulate necessary measures to overcome or at least minimize the adverse effects on their export earnings and economies.

2. While the United Nations Convention on the Law of the Sea itself contains, in articles 151, 171 and 173, certain provisions intended to ameliorate the problems of the developing land-based producers, the work the Conference has assigned to the Preparatory Commission includes, inter alia:

(a) The investigation and determination of approaches that can be pursued for minimizing the difficulties of developing land-based producer States; and

(b) Study of the nature of economic adjustment assistance (including co-operation with specialized agencies and international organizations) that can be rendered to the affected States.

3. There is no doubt that the recommendations that will be formulated by Special Commission 1 in pursuance of the mandate given to it will go a long way in ameliorating the problems of the developing land-based producer States after the International Sea-Bed Authority comes into existence (one year after

the date of deposit of the sixtieth ratification of or accession to the Convention). However, there are certain long-term measures that need to be determined and adopted without further delay by developing land-based producer States themselves (assisted by United Nations organizations and the Preparatory Commission) to ensure that their export earnings and economies are not disrupted or upset beyond acceptable limits when deep sea-bed mining commences on a commercial scale - within or outside the umbrella of the International Sea-Bed Authority.

4. In the following six-point proposal the delegation of Pakistan attempts to outline the measures which must be adopted at the earliest opportunity by developing land-based producer States, with or without the assistance of the international community and the highly advanced technologically developed States, on the basis of the old maxim that even God does not help those who do not help themselves. The Holy Qur'an says that God does not change the destiny of a nation (for better) that does not strive itself to change its destiny.

SIX-POINT PROPOSAL

Point No. 1

Establishment of a special fund by international community/United Nations organizations/donor agencies etc. to assist adversely affected developing land-based producer States

5. It is not necessary to wait for the setting up of the International Sea-Bed Authority or the coming into force of the United Nations Convention on the Law of the Sea in order to institute this fund. The fact that land-based producer States are bound to be adversely affected once sea-bed mining commences on a commercial scale makes it obligatory for the international community, and affluent States in particular, to set up a Special Fund for developing land-based producer States through at least modest contributions straight away, to be utilized for the following main purposes/activities:

(a) To assist developing land-based producer States in conducting economic/technical studies to modernize their mining operations and assist in setting up related finished-product industries;

(b) To assist developing land-based producer States in organizing research and development activities in the field of mining and related industries;

(c) To advance or help arrange loans for balancing, modernizing and re-building the existing mining operations and installations in developing land-based producer States;

(d) To assist and advise developing land-based producer States in diversification of their economies on the basis of their existing or feasible future mining operations.

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Point No. 2

Establishment of metal producers' and exporters' associations on an international scale for protection and promotion of producer States' interests

6. Just as the developing oil producer States were brutally exploited till they formed their own international association (OPEC) to protect and promote their interests, the mineral (metal) producing countries, too, will not be able to protect and promote their interests effectively till they form an effective international association similar to OPEC. Either one such international association i.e., a Metal Producing and Exporting States Organization (MPESO) could be created jointly to take care of the various minerals - to start with, at least - or else different organizations could be created for each main metal. There are obvious advantages and disadvantages in the two alternatives; a meeting of the affected land-based producer States could be convened to resolve these and other essential issues.

Point No. 3

Establishment of a special fund by land-based producer States themselves, by earmarking a small portion of their export earnings annually, to protect and promote their economic interests

7. This fund will be set up and operated separately by land-based producer States themselves (in addition to the one created and operated by the international community, described under Point No. 1 above) by earmarking and setting aside a small percentage of their annual export earnings from a mineral or minerals. The extent of this small self-levy by each of the affected land-based producer States would be determined by land-based producer States themselves and would constitute a joint fund to be utilized for objects/activities similar to those described in paragraph 5 above. The rationale/advantages of setting up this fund may be summarized as follows:

(a) Besides asserting their self-respect as nations seriously committed to help themselves, this fund would enable the land-based producer States to undertake those activities which cannot be funded by the international community, or to augment those activities which are also supported by the international community;

(b) The fund to be created by the international community may take a long time to become operational, or may not even be created, whereas the needs and problems of land-based producer States can no longer be shelved or postponed indefinitely, hence the need for a Special Fund which could be created immediately for common goals by land-based producer States themselves. The argument that the affected land-based producer States are too poor to set up this fund themselves does not hold good and is self-defeating, because if the land-based producer States are not willing to make a small sacrifice and invest in their own future themselves, how can they expect other States to do so on their behalf?

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Point No. 4

Establishment of related industries at national/regional level through common equity and joint ventures of land-based producer States themselves to utilize their mineral products

8. The land-based producer States could and should plan joint ventures through pooled equity to set up finishing/processing industries at mutually agreed locations to market at least a portion of their mineral products in finished form - so that if there is a slump or price manipulation in raw materials market, they could divert raw materials to their own processing/finishing industries. The developed and advanced States also could develop mutually beneficial and profitable arrangements by providing financial and technical assistance to such joint ventures of developing land-based producer States. There will always be a possibility of joint ventures being set up not only by land-based producer States alone but by land-based producer States in collaboration with technologically advanced and affluent countries. However, the primary purpose of setting up such joint ventures would be to enable the land-based producer States to avail themselves of additional profits by marketing a portion of their raw material in finished form as well.

Point No. 5

Institution of measures to diversify the economies of adversely affected developing land-based producer States

9. While it is indeed the primary responsibility of each land-based producer State to initiate and continue measures to diversify its economy, it may not be possible for a State to do so on its own because of financial, manpower and technological constraints. It is, therefore, necessary that the international community and donor agencies should go out of their way to render financial/technical assistance to developing land-based producer States, on a bilateral or multilateral basis, to help them diversify their economies through pragmatic and meaningful, long-term, integrated planning and implementation of economically viable projects. The organizations proposed for establishment by land-based producer States themselves under Point No. 2 can prove to be extremely useful in this regard particularly if international assistance is made available to them.

Point No. 6

Institution of research and development (R and D) effort by land-based producer States with or without international assistance

10. Irrespective of the acceptance and implementation of the previous five points, the need to institute efficient and effective R and D effort at national/regional level by land-based producer States, alone or in collaboration with the international community, must no longer be neglected or

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ignored, unless the land-based producer States are foolhardy enough to adopt an ostrich-like posture in facing their inevitable problems - which are bound to hit them in a decade or two. The R and D effort will not be overly expensive and should be organized essentially by land-based producer States themselves - and they should clearly specify the assistance they expect from the world community in this regard. However, prudence demands that they should plan to go ahead with their R and D efforts themselves without waiting for the world community to come to their rescue.

CONCLUSION

11. The land-based producer States, luckily, have still another decade or two to prepare themselves to face the impact of commercial sea-bed mining on their export earnings and economies. While the international community - and the United Nations, in particular - has a distinct responsibility to come to the help of developing land-based producer States, the affected States owe it to themselves to initiate the measures listed above to ameliorate their problems - and to make determined efforts henceforth to specify their needs collectively and seek the assistance of the world community in implementing these measures in all earnestness. It is the bounden duty of the Preparatory Commission, in particular, to render all possible assistance to help land-based producer States in determining and implementing the measures outlined above.

LOS/PCN/SCN.1/1985/CRP.7
2 April 1985

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1

PROPOSAL BY THE DELEGATION OF ZIMBABWE ON REMEDIAL MEASURES TO ALLEVIATE PROBLEMS THAT AFFECT DEVELOPING LAND-BASED PRODUCER COUNTRIES FOR CONSIDERATION BY SPECIAL COMMISSION I

Regarding the economic measures that could be of relevance to the alleviation of problems that could affect developing land-based producers, Zimbabwe makes the following suggestions and urges consideration of:

1 - (a) Timing of the provision of a compensation fund as provided for under the Convention on the Law of the Sea, Article 151 (10).

(b) The provision of technical assistance including training of personnel to strengthen economic viability of the other components of the mining industry which are not necessarily confined to the four minerals of copper, cobalt, nickel and manganese but would include other minerals. Such assistance is necessary to sustain the mining sectors of these countries because the nature and source of the problem attending these countries would stem from activities in the Area.

(c) Measures aimed at effecting wider deversification of economies of these countries concentrating on priority development area targets identified by the countries that are concerned. The areas that could lend themselves to respond to efforts towards diversification could be

1. Agriculture

2. Certain secondary industries to strengthen manufacturing.

(d) Creation of pools of regional projects that could set up and strengthen mineral commodity beneficiation plants in order to make use of the raw materials whose share of the market may have been

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captured by minerals from the Area. If possible consideration could also be given to set up such plants on a national level.

(e) Use of proceeds of the fund to provide

1. grants and/or

2. soft loans.

2 - (a) The system for minerals (SYSMIN) should be examined carefully as to whether the coverage is adequate to include all developing land-based producers of the minerals under discussion.

(b) Secondly, SYSMIN should be examined as to whether it covers needs of countries that may have overall considerable dependency on their mining sectors in view of the requirements of SYSMIN funds in terms of the thresholds that trigger admissible action.

(c) Remedial measures on effects on developing land-based producers should be fashioned in a way that recognizes the peculiar nature of the problem.

(d) Existing relief measures should be studied keeping in mind the possibility that these may fall short of the remedy to redress the problems of this category of States.

LOS/PCN/SCN.1/1985/CRP.8
16 August 1985

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL SEA-BED AUTHORITY AND FOR THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1

Statement of the Chairman of Special Commission 1, provisionally concluding the discussion on the issue of the concrete formulation of the criteria for the identification of developing land-based producer States likely to be most seriously affected by sea-bed production

As we agreed at the conclusion of the Kingston session and also as I reported the Bureau's recommendations in our first meeting here in Geneva, we could concentrate at this stage on the three issues below, e.g:

(a) the conclusion of our deliberations on the concrete formulation of the criteria for the identification of developing land-based producer States likely to be most seriously affected by sea-bed production;

(b) preparation of an outline to study in-depth possible effects on developing land-based producer States and to investigate the associated problems; and

(c) formulation of certain guidelines that need to be taken into account by the Authority in devising any remedial or assistance measure.

I suggest that we start with the first issue, namely, identification of the developing land-based producers likely to be most seriously affected by sea-bed production. In Kingston we had a background document SCN.1/WP.3. On the basis of that document we had quite an extensive discussion on the issue. I feel that we should be able to conclude at this time, on a provisional basis, our deliberations on this issue.

In the course of the extensive discussion, I noted that general agreements were emerging on several aspects:

(1) There was a general agreement that a final identification of developing land-based producer States likely to be most seriously affected by sea-bed production can be carried out by the Authority in due time.

(2) There was also a general agreement that this final identification will be done at a time rather close to the time of the earliest commercial production from the sea-bed in the Area.

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(3) The discussion had combined two (2) matters: identification of developing land-based producer States which would be actually affected ex post after sea-bed mining occurs and the identification of developing land-based producer States which would be likely to be most seriously affected. While the final identification can be carried out by the Authority in due time, it was also agreed that some kind of preliminary identification at present or in the very near future could be done.

(4) Before actually identifying developing land-based producer States likely to be most seriously affected, we should first decide on the criteria for such identification. This is different from the actual identification itself.

(5) In conformity with the provisions of Articles 150(h) and 151(10), we agreed that the criteria would be related to export earnings or economies of developing land-based producer States. The main idea is to see how dependent a developing land-based producer State is on copper, nickel, cobalt and manganese for its export earnings or for its economy. We also agreed that quantifiable yardsticks related to the criteria could be used.

(6) With regard to the criteria of export earnings, several quantifiable yardsticks could be used:

(a) absolute value of exports of the four minerals. If a developing land-based producer State has an export earning of "X" million dollars from these four minerals before sea-bed mining occurs, it is likely to be most seriously affected by sea-bed production. The Special Commission should define "X", say, an average of US$100 million a year during the last 5 years before production authorizations are issued to the sea-bed miners;

(b) absolute value of export earnings in relation to total export earnings. In this case, if a developing land-based producer State is earning "Y" per cent of its total export earnings from these four minerals, then that State is likely to be most seriously affected by sea-bed production. The Special Commission should define "Y", say, an average of 10% of its export earnings a year during the last 5 years before production authorizations are issued to the sea-bed miners;

(c) absolute amount of production of these four minerals. The Special Commission should quantify the amount clearly, say, an average of 100,000 tons of copper, or 50,000 tons of nickel, or 10,000 tons of cobalt, or 50,000 tons of manganese a year during the last 5 years before production authorizations are issued to the sea-bed miners;

(d) value of production in relation to total Gross National Product or total Gross Domestic Product. The Special Commission should quantify this ratio. For example, a State whose average production of the four minerals per year during the last 5 years prior to the issuance of production authorizations to the sea-bed miners represent 10% of its GDP, is likely to be most seriously affected by sea-bed production;

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(e) value of export earnings from the four minerals in relation to the economy. The Special Commission should quantify this ratio. For example, if a developing land-based producer State's exports of the four minerals account for 5% or more of its Gross Domestic Product, it is likely to be most seriously affected by sea-bed production;

(f) some combination of various quantifiable yardsticks related to export earnings and those related to economies. The Special Commission, if it prefers such a combination should express this quantitatively.

(7) The yardsticks should be properly measured statistically. For example, with regard to export earnings, the role of barter trade should be taken into account statistically.

(8) In applying the criteria, the influence of various relevant factors, e.g. population, per capita income, geographical location, area, etc., may have to be taken into consideration.

(9) The quantifiable yardsticks may have to be expressed in terms of a formula. We had one such formula in the Secretariat paper, WP.3. That formula may have been too complicated. Our purpose may be served by a much simpler one.

(10) The 5-year period for averaging the values of quantifiable yardsticks should be the one starting from the fifth year before the first batch of production authorizations are issued and ending in the year when these production authorizations are issued.

(11) From the above provisional conclusions, and on the basis of the mandate given to me by the Special Commission on 15 August 1985, the following formulations may, for the time being, meet the requirements of the Special Commission 1:

A developing land-based producer State should be considered likely to be most seriously affected by sea-bed production if -

(i) it exports an average of US$100 million of the four minerals a year during the last 5 years before production authorizations are issued to the sea-bed miners; or

(ii) it earns an average of 10 per cent of its total export earnings from these four minerals per year during the last 5 years before production authorizations are issued to the sea-bed miners; or

(iii) it produces an average of 100,000 tons of copper, or 50,000 tons of nickel, or 10,000 tons of cobalt, or 50,000 tons of manganese a year during the last 5 years before production authorizations are issued to the sea-bed miners; or

(iv) its average production of the four minerals per year during the last 5 years before production authorizations are issued to the sea-bed miners represents 10% of its GDP; or

(v) its exports of the four minerals account for 5% or more of its GDP per year during the last 5 years before production authorizations are issued to the sea-bed miners.

(12) The identification of developing land-based producer States under the above formulation is solely for the purpose of studying their potential problems and cannot at this time be considered as an automatic basis of future formulation of remedial measures with regard to their specific problems. In addition, the above formulations do not address the issue whether or not or how much the effects are attributable to sea-bed mining. This would be formulated under the study of "effects".

LOS/PCN/SCN.1/1985/CRP.8/Corr.1
22 August 1985

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1

Statement of the Chairman of Special Commission 1, provisionally concluding the discussion on the issue of the concrete formulation of the criteria for the identification of developing land-based producer States likely to be most seriously affected by sea-bed production

(Corrigendum)

Page 2, paragraph 6, should read:

(6) With regard to the criteria of export earnings or economies, several quantifiable yardsticks could be used:

LOS/PCN/SCN.1/1985/CRP.9
26 August 1985

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY AND FOR THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1

Statement of the Chairman of Special Commission 1, provisionally concluding the discussion on the issue of the preparation of an outline to study in-depth possible effects of sea-bed production in the Area on developing land-based producer States and to investigate the associated problems

1. The Special Commission has agreed to concentrate on three issues during the present Geneva meeting (a listing of the three issues is contained in document LOS/PCN/SCN.1/1985/CRP.8). My provisional conclusions of the discussion on the first issue, namely, concrete formulation of the criteria for the identification of the developing land-based producer States likely to be most seriously affected by sea-bed production are included in the above document. The present document contains my provisional conclusions of the discussion on the second issue, namely, preparation of an outline to study in-depth possible effects of sea-bed production in the Area on developing land-based producer States and to investigate associated problems. At an appropriate time in the future, when the status of the discussion on the third issue, i.e., formulation of certain guidelines that need to be taken into account by the Authority in devising any remedial or assistance measure, warrants it, I may present my provisional conclusions of the discussion on this issue in the form of another Conference Room Paper (CRP).

2. The issue at hand was addressed in the course of the general discussion on the matters related to the mandate of the Special Commission, during the second session of the Preparatory Commission in Kingston in 1984 and the Geneva meeting in 1984. There was an extensive discussion on the issue during the Third Session in Kingston in 1985. At times, the issue was addressed in connexion with the discussion on the other two issues mentioned in paragraph 1

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above. During the Third Session, however, there was a focused discussion on the issue itself, based on the relevant documentation, e.g., United Nations Conference on the Law of the Sea documents L.66 and L.84, and Preparatory Commission documents SCN.1/1984/CRP.2 and 3, SCN.1/WP.1, 3 and 4. Based on these discussions as well as further consultations, I noted that some general agreements and trends were emerging. I feel that certain provisional conclusions can be made at this time.

3. First of all, on the role of the Special Commission, there was a general agreement that:

(a) While the Special Commission can study, in general terms, the possible effects of sea-bed production on developing land-based producer States and the possible problems that could be encountered by such States flowing from these effects, the in-depth studies themselves and the thorough assessments of the effects of sea-bed production in the Area on developing land-based producer States, and the associated problems, should be undertaken by the Authority when sea-bed production occurs in the Area.

(b) These studies will be undertaken on a case-by-case basis. The cases will pertain to particular developing land-based producer States and particular minerals. In this context, it was generally felt that at this time a generalized case study with broadly defined parameters and hypothetical data may be of limited use only.

(c) The Special Commission, however, can prepare an outline of the in-depth investigation that could be carried out by the Authority.

4. Secondly, with regard to the effects, and in conformity with the provisions of Articles 150(h) and 151(10), there were general agreements that:

(a) The effects of sea-bed production in the Area that would be studied will be those on export earnings or economies of developing land-based producer States.

(b) The effects have to result from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by the exploration for, and exploitation of, the resources of the Area.

(c) Although in the near future, the only exploitable resource in the Area appear to be polymetallic nodules, trends and developments regarding resources in the Area other than polymetallic nodules, for example, polymetallic sulphides, cobalt-rich manganese crusts, etc., will be kept in view.

(d) Although in the near future, the minerals extractable from the polymetallic nodules appear to be copper, nickel, cobalt and manganese only, trends and developments regarding other minerals that may be extracted from polymetallic nodules will be kept in view.

(e) There was no agreed methodology yet to determine the extent of reduction in the price of an affected mineral or in the volume of exports of that mineral caused by sea-bed production. The Authority will have to devise an agreed methodology.

(f) In devising the methodology, the Authority will have to take into account other factors that may have an effect on price or volume of exports of the minerals concerned, e.g: (i) general economic conditions in the developing land-based producer States concerned,

(ii) situation in the metal market,

(iii) supply from and cost of production of metals from other sources, e.g., newly developed deposits on land, marine minerals within national jurisdiction,

(iv) technological development,

(v) substitution.

/...

(g) Transactions in both so-called "open market" and "controlled market" should be taken into account. The extent to which a particular developing land-based producer State carries out trade in open market and controlled market has to be determined. With regard to the controlled market, it was suggested that a study of the bilateral trade arrangements can establish the cause-and-effect relationships in a relatively direct manner.

5. Thirdly, with regard to the measurement of the effects, it was generally agreed that:

(a) The effects on export earnings and economies of a developing land-based producer State should be quantified, to the greatest possible extent. While it was felt that it may be relatively easy to quantify the effects on export earnings, utmost effort should be made as well to quantify the effects on economies.

(b) With regard to effects on economies, various factors should be taken into consideration such as:

(i) direct reduction in the income of the developing land-based producer States,

(ii) unemployment,

(iii) foreign exchange unavailability,

(iv) reduced government revenues and investible funds for development,

(v) so-called side effects, e.g., reduced production of accessory minerals,

and

(vi) multiplier effects reflecting the linkages of the mineral sectors concerned with other sectors.

6. Fourthly, on the extent of the effects, it was felt that in the in-depth studies, the Authority may make a distinction among adverse effects, serious adverse effects and most serious adverse effects. Again, a quantitative distinction on this aspect seemed to be preferable.

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7. Fifthly, with regard to the problems, while the above adverse effects by themselves may be considered problems, the basic problem may lie in the fact that the capabilities of developing land-based producer States in countering or controlling these effects are limited. The extent of the limitations may vary from State to State, depending on various factors, and this needs to be studied by the Authority.

8. Finally, on a procedural matter, according to the provisions in Article 151(10) of the Convention, the Authority shall initiate studies on the problems of developing land-based producer States on request from such States. According to Article 164(2)(c), the Economic Planning Commission (EPC) of the Authority shall examine any situation likely to lead to adverse effects, brought to its attention by the State Party or States Parties concerned. It can be assumed that the process of bringing to the EPC's attention will start when a particular land-based producer State would submit pertinent information, data and analysis. The initial submission would be examined by the EPC, while the final findings, it can be assumed, will be the results of joint and agreed investigation by the Authority and the State Party concerned.

9. Based on the above provisional conclusions, I submit, for the consideration of the Special Commission, the following outline of an in-depth study to be undertaken by the Authority on the possible effects of sea-bed production in the Area on developing land-based producer States and the associated problems:

> Case-by-case study: State-by-State as well as mineral-by-mineral (initial submission of case by the affected land-based producer State, initial examination of the case by the EPC and final findings jointly by the State and the Authority), to comprise of, among others:
>
> (a) Identification of resources of the Area exploited, and the minerals extracted from these resources.

(b) Estimation of volume of production of each mineral from the Area.

(c) Formulation of methodology to establish to what extent effects on price or volume of exports of a mineral of a developing land-based producer State are caused by production of the mineral from the Area, taking into account relevant factors mentioned in paragraph 4 above.

(d) Determination of extent of transactions in open market and controlled market.

(e) Assessment of effects felt through the operation of open market and those felt through the operation of controlled market, especially through changes in bilateral trade arrangements.

(f) Quantification of effects on export earnings.

(g) Quantification of effects on economies, taking into account the direct effects, side effects and multiplier effects.

(h) Investigation of problems associated with the effects, including assessment of capabilities of the affected State to counter or control the effects.

LOS/PCN/SCN.1/1986/CRP.10
21 March 1986

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1

CHAIRMAN'S PRELIMINARY SUMMARY OF POINTS RELEVANT TO THE WORK OF SPECIAL COMMISSION 1, CONTAINED IN DOCUMENT LOS/PCN/SCN.1/WP.5

1. After examining LOS/PCN/SCN.1/WP.5 and taking into account the initial general discussion on the document, I would like to present a preliminary summary of the points contained in the responses of the various organizations included in that document, which are of particular relevance to the work of our Special Commission.

I. United Nations Department of International Economic and Social Affairs (DIESA)

2. The Department has a programme which is designed to assist and encourage developing States to incorporate their marine resources in their development programmes.

3. Developing land-based producer (DLBP) States could contact DIESA with a view to obtaining assistance from that department as to how they could better utilize and develop their marine resources within the framework of their development programmes.

4. A DLBP State could also study the DIESA publication on "Methodologies for Assessing the Impact of Deep-Sea-Bed Minerals on the World Economy" so that appropriate measures can be devised for minimizing the adverse impact of deep sea-bed mining on its economy, if it foresees such impact in the future.

II. United Nations Centre on Transnational Corporations (CTC)

5. The CTC carried out studies on copper in several producer countries focusing on the role of transnational corporations (TNC) in the copper industry in developing countries.

6. A DLBP State of copper could seek arrangement, through the CTC, with the transnational corporations concerned operating in that State so that activities of TNC's in sea-bed mining, if any, would not cause dislocation to its copper industry.

III. United Nations Development Programme (UNDP)

7. UNDP has a programme to assist developing States to broaden their industrial, agricultural and human resources bases to lessen the risk of over-dependence on specific commodities and the vagaries of world market prices that may affect those commodities. Some of the specific measures suggested by UNDP include activities to enhance self-reliance, reduce imports, expand alternative exports and enhance trade.

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8. UNDP has also supported some developing countries of the South Pacific and East Asia in the exploration of marine minerals in their EEZs.

9. A DLBP State could contact UNDP to ascertain in what way UNDP could help it broaden its industrial, agricultural and human resources bases and to explore and make use of the resources of its EEZs as applicable.

IV. UNDP/UN Revolving Fund for Natural Resources Exploration

10. UNDP has a Fund to help developing countries to explore their nickel, cobalt and manganese resources if they are considered to have potential economic viability.

11. A DLBP State could first assess the economic viability of its nickel, cobalt or manganese resources and thereafter, if there is potential economic viability, seek assistance from UNDP's Revolving Fund to help it explore those resources.

V. United Nations Conference on Trade and Development (UNCTAD's) Commodity Agreements

12. UNCTAD's Integrated Programme for Commodities (IPC) promotes Commodity Agreements or Arrangements as well as the establishment of Common Fund for Commodities. Copper and manganese ore are already included in the IPC. But so far there has been no commodity agreement for copper, cobalt, nickel or manganese.

13. One of the examples of the commodity agreements is the International Tin Agreement (ITA) which embodies two main operational mechanisms, namely, the use of a buffer stock and the application of export controls in order to adjust supply to demand.

14. DLBP States could be encouraged to work towards the establishment of commodity agreements for copper, nickel, cobalt or manganese, keeping in view the experience of the International Tin Agreement. In examining the possibility of the establishment of commodity agreements for copper, nickel, cobalt or manganese, DLBP States could consider the need for buffer stock and the application of export controls as effective modalities within the framework of commodity agreements.

VI. UNCTAD's Common Fund for Commodities

15. UNCTAD's Common Fund for Commodities is intended: (a) to contribute to the financing of international buffer stock within the framework of the Commodity Agreements, (b) to finance measures in the field of commodities other than stocking, and (c) to promote co-ordination and consultation with regard to measures in the field of commodities.

16. Since the Common Fund, through its second account, may provide or participate in loans and grants for the financing of measures in the field of commodities other than stocking, a DLBP State could make use of the Common Fund, when it finally enters into operation, and could request it to assist in ensuring the effectiveness of commodity agreements on copper, nickel, cobalt or manganese, if and when established, and to help finance measures in the field of commodities other than stocking.

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VII. UNCTAD's Complementary Facilities to compensate for shortfall in export earnings of each commodity

17. UNCTAD is currently preparing detailed studies for the operation of complementary facilities to compensate developing countries for shortfall in the export earnings of their commodities. These facilities shall be additional to the improvement of the compensatory financing facilities of the IMF and other facilities or actions taken to deal with the issue of price stabilization.

18. DLBP States could seek the inclusion of copper, nickel, cobalt and manganese in such complementary facilities and in the system of compensatory financing for export earning shortfalls of the IMF.

19. DLBP States could also make use of such UNCTAD complementary facilities, if and when established in the future.

VIII. UNCTAD's activities in relation to the processing, marketing and distribution, including transportation, of commodities of export interest to developing countries

20. UNCTAD has prepared 13 studies on the processing and/or marketing of commodities covered by the IPC, including copper and manganese. The studies discuss various ways of expanding exports of developing countries in those commodities.

21. DLBP States could study those measures and attempt to apply them to their respective conditions, as appropriate.

22. Among the suggestions made by UNCTAD to improve the exports of developing countries with regard to copper and manganese are the promotion of international co-operation with regard to price stabilization, removal of barriers to trade, or commodities exchanges, review of contract conditions under which copper is sold, increase in market transparencies as well as technical and financial assistance, exchange of information between developing countries, joint research and development projects that could be eligible for international assistance, and improved availability of capital. Similarly, the UNCTAD study on manganese has also analysed the problems related to this mineral.

23. DLBP States could examine the findings of the studies prepared by UNCTAD on processing, marketing and distribution, including transportation, of copper and manganese and make use of, as far as practicable, the numerous recommendations suggested in those studies.

IX. United Nations Industrial Development Organization (UNIDO)

24. UNIDO is currently studying the restructuring of non-ferrous metals industries, including copper and nickel, as a response to the uncertain or poor outlooks on the future of the non-ferrous metals markets. One of the suggestions of the UNIDO Expert Group on this matter is to further process the non-ferrous metals in the developing countries themselves. Other suggestions include increasing regional or sub-regional co-operation to make more use of the minerals, and the co-operation between developing countries and developed countries for stability of prices and security of supply.

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25. DLBP States could seek the expansion of the UNIDO efforts to include cobalt and manganese as well, and to benefit from the studies and recommendations which UNIDO has made to assist developing countries in restructuring their mineral industries.

X. United Nations Environmental Programme (UNEP)

26. UNEP has provided support to land-based metal mining and processing activities in developing countries, particularly for environmental management of copper and nickel industries which may lead to reduction in environmental protection expenses.

27. DLBP States could encourage UNEP to expand its activities to cover cobalt and manganese industries as well, and seek the assistance of UNEP for environmental protection and management of the relevant industries which, in the end, could promote a sound mineral and industrial development. By reducing this cost, it would enable them to increase their competitiveness in the world market of those minerals.

XI. Economic Commission for Africa (ECA)

28. With regard to regional commissions, they are mandated to assist the Member States in the regions concerned. The developing land-based producer States in the various regions can utilize the measures and programmes of the respective regional commissions to minimize their difficulties. With regard to ECA, specifically, it is in the process of developing a programme to assist its Member States in dealing with the possible adverse repercussions of sea-bed mining on their mineral sectors.

29. DLBP States in the African region could participate effectively in that effort so that the ECA's future programme is geared specifically to their needs.

30. ECA has also proposed the establishment of a mining fund which could be utilized for a range of objectives in the best interest of the countries contributing to it.

31. DLBP States in the African region could follow the developments in this context and provide their inputs to the process of establishing such a fund, if it is considered beneficial.

XII. Economic and Social Commission for Asia and the Pacific (ESCAP)

32. The mineral programme of ESCAP is focused on the promotion of systematic geophysical, geological and geochemical surveys to generate the required information and data on mineral occurrences and deposits, their mineral composition, content and mineability. ESCAP also provides technical advisory services and organizes specialized training in various aspects of mineral resource development.

33. DLBP States in the ESCAP region could contact ESCAP with a view to developing and implementing projects in the above fields as well as to examining how they can utilize the technical advisory services and the specialized training programmes of ESCAP.

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XIII. World Bank (WB)

34. World Bank has a variety of assistance measures for the benefit of developing countries most of which can be of interest to Special Commission 1. The specific measure which is mentioned in LOS/PCN/SCN.1/WP.5, structural adjustment loan, is directly relevant for the purpose of Special Commission 1 in view of the fact that these loans are aimed at improving the balance-of-payments situation in the medium- and long-term, maintaining growth in the face of severe constraints and helping regain growth momentum in the future. These loans are also intended to assist developing countries with the transitional costs of required structural changes in the economy consequent to adverse situations encountered in given existing sectors.

35. DLBP States could contact World Bank regarding the availability of structural adjustment loans in their particular contexts.

XIV. International Monetary Fund (IMF)

36. The IMF's Compensatory Financing Facility appears to be geared to assist developing countries in case of short-term fluctuations in export earnings. During the Geneva Meeting we heard the presentation of the IMF representative who emphasized that in the future also IMF may retain this short-term orientation. In any case, DLBP States encountering adverse effects on exchange earnings as a result of sea-bed production in the future may be able to utilize this facility of IMF, at least in the shortest term.

37. DLBP States could contact IMF regarding the availability of assistance from this facility as soon as the adverse effects are felt.

38. The other facility of IMF, the Buffer Stock Financing Facility, has a prerequisite, which is the establishment of an international commodity agreement in the mineral concerned.

39. DLBP States could work towards the establishment of commodity agreements for various other reasons as well as for the purpose of utilizing this facility of IMF.

XV. United Nations Educational, Scientific and Cultural Organization (UNESCO) and its Intergovernmental Oceanographic Commission (IOC)

40. IOC of UNESCO has a programme which promotes scientific research geared to the exploration and exploitation of non-living resources.

41. DLBP States could contact IOC regarding how to obtain assistance in scientific research programmes in relation to the non-living resources in their maritime zones, especially the mineral resources of concern to Special Commission 1.

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XVI. International Labour Organisation (ILO)

42. ILO has programmes dealing with issues of concern to employers and workers directly involved in mining activities, e.g., safety and health, vocational training, industrial relations, etc.

43. DLBP States could contact ILO regarding these programmes so that with higher levels of safety and health, vocational training and better industrial relations, the mining sectors of these countries can be more productive and efficient, thus more competitive.

XVII. Inter-American Development Bank (IDB)

44. The regional development banks have a mandate to assist Member States in their respective regions. IDB, in its region, promotes investment of public and private capital for development purposes, utilizes its own capital for financing the development of the member countries, encourages private investment in projects and activities contributing to economic development of member countries, co-operates with them to orient their development policies towards a better utilization of their resources and provides technical assistance for the preparation, financing and implementation of development plans and projects.

45. DLBP States in that region could contact IDB in order to find out how they can benefit from its programmes related to economic development.

46. In the mining sectors, in particular, IDB is prepared to consider requests for project financing and/or technical co-operation financing which will contribute to the identification and evaluation of mineral resources, development and exploitation of mineral resources, provision of necessary infrastructure in developing mining projects, increase of the value added in the mineral sector, etc.

47. DLBP States of that region could submit requests, to IDB for project financing and/or technical co-operation financing, as appropriate.

XVIII. Commission for European Communities (EEC)

48. EEC-ACP countries, under the Lomé Convention, have a number of programmes which are aimed at the development of the ACP (African, Caribbean and Pacific) countries.

49. DLBP States in the ACP region could examine how they can benefit from these programmes oriented to overall economic development.

50. For the minerals concerned, EEC has a specific measure, System for Minerals (SYSMIN). SYSMIN assists ACP countries heavily dependent on their mining sectors to cope with exceptionally adverse circumstances seriously affecting these sectors, the main focus being safeguarding the viability of the source of export earnings, that is to say, production/export capacity of the mining sectors concerned.

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51. DLBP States in the ACP region could assess whether they can be eligible for assistance from the SYSMIN and once eligible, whether they can obtain assistance from the SYSMIN under given conditions.

XIX. General Agreement on Tariffs and Trade (GATT)

52. The various rounds of multilateral trade negotiations (MTN) under the aegis of GATT are aimed at, in general terms, the reduction of tariff and non-tariff barriers to the exports of developing countries, raw materials and manufactured goods, as well as at the promotion of an international framework for the conduct of world trade.

53. DLBP States could participate effectively in the new round of MTN so that the objectives of the MTN are achieved to the fullest extent possible, thus helping the DLBP States concerned to secure better terms for their commodities.

54. The GATT Secretariat has been providing technical assistance to developing countries designed to help them assess the tariff results of the multilateral trade negotiations as well as to provide information and explanations relating to the codes and multilateral agreements in this area.

55. DLBP States could contact GATT in order to avail themselves of this type of technical assistance, thus facilitating their access to the world market.

XX. Intergovernmental Council of the Copper Exporting Countries (CIPEC)

56. CIPEC is an example of an association of mineral exporting countries aimed at the prevention of excessive fluctuations in the price of the mineral (copper) and the improvement of the situation in the mineral sector concerned through increased co-operation and concerted action by mineral exporting countries.

57. DLBP States could contact CIPEC in order to assess how an association of exporting countries operate, what its strengths are, what kind of constraints it faces, so that they can be in a better position to decide for themselves regarding the suitability of this type of association for their own purpose, namely, for nickel, cobalt and manganese.

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PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
Ninth Session
Kingston, 25 February-22 March 1991

CHAIRMAN'S PRELIMINARY SUMMARY OF POINTS RELEVANT TO THE WORK OF SPECIAL COMMISSION 1, CONTAINED IN DOCUMENTS LOS/PCN/SCN.1/WP.5/Adds.1-4

1. After examining LOS/PCN/SCN.1/WP.5 and taking into account the general discussion on the document, I presented in document LOS/PCN/SCN.1/1986/CRP.10, a preliminary summary of the points contained in the responses of the various organizations included in that document, which are of particular relevance to the work of our Special Commission. During the past few sessions four addenda to document LOS/PCN/SCN.1/WP.5 have been issued. After examining these additional documents and taking into account the discussion on these documents, I would like to present a preliminary summary of the points contained in the responses of the various organizations included in these documents, which are of particular relevance to the work of our Special Commission.

I. United Nations Department of Technical Co-operation for Development (UN/DTCD)

2. UN/DTCD provides technical assistance for mining, focussing on mineral exploration and on institutional strengthening of government services, mainly geological surveys.

3. In the recent years, UN/DTCD's technical co-operation has been reoriented to include an increasing share of investment-related activities. Investment advisory services, including training, are provided in each phase of the sequential process of an investment-related project — extending from designing a mineral policy including the formulation of policy instruments to systematic investment promotion, investment negotiations, monitoring of agreements, support in arranging financing and building up marketing capabilities.

4. Developing land-based producer (DLBP) States could contact UN/DTCD with a view to obtaining technical assistance in their mineral sector and to benefitting from UN/DTCD's investment advisory services in the development and implementation of mineral projects.

II. United Nations Conference on Trade and Development (UNCTAD's) work on individual commodities

5. As regards nickel, the United Nations Conference on Nickel held under the auspices of UNCTAD successfully concluded its work by adopting the terms of reference of the International Nickel Study Group (INSG). Interested

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governments continue with efforts to put into effect the terms of reference and to convene the inaugural meeting of INSG.

6. As regards copper, the United Nations Conference on Copper held under the auspices of UNCTAD established the terms of reference of the International Copper Study Group.

7. As regards manganese, following consultations between consumers and producers and pursuant to the broad agreement among participants in these consultations, UNCTAD is carrying out preparatory work for a study group type of arrangement.

8. DLBP States producing nickel, copper or manganese could participate in and benefit from the work of the respective study groups, which involve consultations and exchange of information, improvement of mineral statistics, assessment of market situation and outlook, and market development.

III. Possible work of UNCTAD on the impact of sea-bed production

9. Although at present, UNCTAD is not planning any work directly related to the possible impact of sea-bed production on DLBP States, UNCTAD could examine this issue, if and when it becomes relevant, in their studies on individual commodities in question, especially within the framework of a research/technical assistance project entitled "the role of the mineral sector in the development process of developing countries (project MINDEV)".

10. DLBP States could bring to the attention of UNCTAD the problems which could be encountered by them as a result of sea-bed production, and benefit from the work of UNCTAD that might follow. DLBP States could also utilize project MINDEV to obtain assistance in the planning of mineral sector programmes with a view to integrating the mineral sector into their economy as a whole and thus promoting a self-sustaining process of development.

IV. United Nations University (UNU)

11. In the past, UNU held workshops, at the regional level, on marine mineral resources. UNU is working towards the establishment of an institute for natural resources in Africa (INRA) as a research and training centre of UNU. One of the priority matters on which INRA will concentrate is mineral resources development, including training programmes and related research-and-development work and policy studies in selected areas. Three priority areas have been identified: mineral endowment, technology and management, and policy options.

12. DLBP States could study the findings of the UNU workshops on marine mineral development. DLBP States of Africa could benefit from the work of INRA, when it is established.

V. Economic and Social Commission of Western Asia (ESCWA)

13. ESCWA has undertaken a number of studies dealing with various issues of mineral resources development at the national, subregional and regional

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levels, from which important recommendations have emerged, that ESCWA is in the process of implementing. These recommendations address measures to promote investment in mineral resources development through the establishment of regional mining research institutes, consulting firms and documentation and information centres, as well as measures for skilled manpower training.

14. DLBP States from the region could encourage ESCWA in implementing the recommendations, and subsequently, could take advantage of the measures addressed in the recommendations.

VI. Economic Commission for Latin America and the Caribbean (ECLAC)

15. ECLAC has prepared various studies and reports on the mineral sector the findings of which emphasized the need for (a) the improvement of the negotiating capacity of developing countries, in order to obtain greater participation in mineral trade and income; (b) obtaining financial resources so that prospecting and exploration can be expanded and benefits from minerals increased; and (c) the vertical integration of the production processes so as to advance the industrialization of the mining sectors.

16. ECLAC has studied the possible impact of future sea-bed production on the mineral sector in the region. As possible measures to counterbalance the negative effects of sea-bed production, several alternatives have been suggested: (a) the exploitation of high-quality ore deposits to allow for a reduction in production costs; (b) the integration of industrial mining production at the regional or subregional level; (c) the diversification of mining production so that the copper, nickel, cobalt and manganese industries account for a smaller share of the mining sector; and (d) participation in the future income from the exploitation of marine nodules in the Area.

17. Another important step in ECLAC's promotion of mineral resources development in the region has been the establishment of the Latin American Mining Organization composed of both private and public entities. The Organization has as its aims encouraging co-operation among members, so as to achieve progressive stages of geological, mining and metallurgical development, contributing to the Latin American integration process. The Assembly of the Organization has also mandated (a) maintaining updated information on the evolution and development of sea-bed mining and its possible effects on land-based producers and (b) preparing research studies on the exploration and exploitation of the resources in the Area.

18. DLBP States of the region could study the recommendations of the reports of ECLAC both with regard to the mineral sector and to the possible impact of sea-bed mining, and explore the possibilities of implementing them. DLBP States of the region could participate in and benefit from the work of the Latin American Mining Organization.

VII. Third Regional Conference on the Development and Utilization of Mineral Resources in Africa held under the auspices of the Economic Commission for Africa (ECA)

19. Regional conferences on mineral development and utilization in Africa have been held since 1981 as a result of the decision taken by the heads of States of the Organization of African Unity (OAU) at their first economic summit at Lagos in 1980 when they adopted the Lagos Plan of Action for the Economic Development of Africa to the year 2000.

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20. Among the elements of the Programme of Action adopted by the Third Regional Conference held in Kampala, Uganda are: (a) the establishment of upstream and downstream industries in Africa; (b) expanded participation in the regional and subregional institutions promoting co-operation in the development and utilization of mineral resources; (c) restructuring and harmonizing the national mineral policies with national development policies, as a whole; (d) increased intra-African manufacture and trade in selected minerals; and (e) establishment of an effective transport system as one of the means for enhancing intra-African trade.

21. African and foreign investors were urged to encourage the formation of African mining and mineral-based industries and multinational corporations, in which they should invest in order to reduce the over-dominance of foreign companies in the mineral sector.

22. Given the likelihood that the recovery of minerals in the international sea-bed areas could adversely affect the economies of developing land-based producers of similar resources, and the principle that the exploitation of mineral resources in the international sea-bed Area ought to benefit mankind as a whole, it was stressed that the participation of developing countries in the ongoing negotiations of the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea should ensure: (a) the preservation of the fundamental concept of the equitable share of financial benefits accruing from the commercial exploitation of the common heritage resources; and (b) the formulation of modalities for the establishment of a compensation fund or the implementation of other compensatory measures.

23. DLBP States in the region could co-operate with ECA and OAU in implementing the recommendations contained in the Kampala Programme of Action.

VIII. United Nations Industrial Development Organization (UNIDO's) assistance in the mineral industries of developing countries

24. UNIDO has developed a variety of programmes to bring technical assistance, training, information, technology and industrial planning to developing countries, covering a wide spectrum of industrial branches which includes mining and metallurgical industries. At the same time, UNIDO helps to bridge the interests of donors and recipients by promoting industrial co-operation between developed and developing countries.

25. UNIDO maintains Investment Promotion Services (IPS) in different regions to facilitate contacts between businessmen and governments of the developing countries. At the pre-investment level, UNIDO's Industrial Investment Programme identifies suitable industrial investment projects analyzing various factors favourable to investment. Finding appropriate resources to bring a project to fruition is the main thrust of the programme's services.

26. In the non-ferrous metal sector, the projects of UNIDO include assistance in developing mineral-based industrial processing operations, strengthening and/or establishing centres for metallurgical technology, and promoting projects in mineral beneficiation, environmentally sound mining and metallurgy, and waste utilization.

27. UNIDO has a special programme on the Industrial Development Decade in Africa (IDDA). This programme focuses on the establishment of priority core industries and related industrial manpower and technological capabilities, and

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support to institutional machinery and raw materials base.

28. DLBP States could contact UNIDO with a view to obtaining assistance in their mineral sector. DLBP States from Africa could utilize the services under the special programme on IDDA.

IX. African Development Bank (ADB)

29. ADB provides development loans to its member countries, both from its own funds and from the African Development Fund (ADF). The efforts of the ADB group geared towards the improvement of the situation in the mineral industry in developing countries are reflected in a number of loans made to member countries for the mining and extraction sectors.

30. DLBP States that are member countries of ADB could submit requests to ADB for financing of projects which would counterbalance the negative impacts, if any, of future sea-bed production.

X. Asian African Legal Consultative Committee (AALCC)

31. AALCC assists countries in achieving the optimum utilization of the resources of their exclusive economic zones.

32. DLBP States could contact AALCC with regard to such assistance, which may minimize the negative impact of sea-bed production, if any.

XI. Commonwealth Secretariat

33. The Commonwealth Secretariat is involved in providing expertise to member countries in order to enhance their capability to generate and use science and technology for resource development, and to foster their overall economic, social and environmental progress. This is being achieved through collaboration among the member countries in: the provision of scientific and technological advice with regard to the resources of member countries; the promotion of the exchange of information and personnel; and the preparation of studies designed to assist scientific and technological activities of priority and developmental significance.

34. A Commonwealth Group of Experts presented a report, "Ocean management - a regional perspective: Prospects for Commonwealth maritime co-operation in Asia and the Pacific". The report contains useful information on deep-sea hard minerals in CHOGRM (Commonwealth Heads of Governments Regional Meeting) and CCOP/SOPAC (Co-ordinating Committee on Prospecting/South Pacific) countries. It also provides information about contacts involved in various programmes and activities in the Pacific region. The Commonwealth Secretariat is pursuing the implementation of the recommendations of this report.

35. Another expert group report includes water and minerals resources programme area that is concerned with the exploration, assessment and development of mineral resources. Training in exploration methods involving geochemistry and geophysics has been conducted in various regions.

36. DLBP States that are members of the Commonwealth could contact the Secretariat for assistance. They could also examine the various studies prepared by the Secretariat, and make use of, as far as practicable, the

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findings of these studies.

XII. International Lead and Zinc Study Group (ILZSG)

37. ILZSG is a successful example of a mineral study group, the main objectives of which are: to provide opportunities for appropriate intergovernmental consultations on international trade in lead and zinc; to provide continuous, accurate information on the supply-and-demand situation and probable developments in this regard; to collect and disseminate statistics; to carry out studies on the world situation in lead and zinc; and to consider possible solutions to any special problems or difficulties which exist or may be expected to arise in lead and zinc and which are unlikely to be resolved in the ordinary development of world trade.

38. DLBP States could learn from the experience of ILZSG as to the effective operation of a mineral study group, and apply this experience in the operation of the future study groups on nickel, copper and manganese.

XIII. Organization for Economic Co-operation and Development (OECD)

39. Members of OECD's Development Assistance Committee (DAC) and the multilateral development banks provide financial and other assistance for the development of extractive industries in developing countries.

40. DLBP States could contact OECD and explore the possibilities of obtaining financial assistance for projects that would facilitate countering the negative impacts, if any, of future sea-bed production.

XIV. Organization of American States (OAS)

41. OAS's work in the mineral sector was aimed at improving understanding of the statistics on mineral production and processing.

42. DLBP States could examine the recommendations of the OAS studies with a view to improving mineral statistics, which, in turn, may contribute to the development of the mineral sector.

XV. Organization of Petroleum Exporting Countries (OPEC)

43. The principal aim of OPEC is the co-ordination and unification of the petroleum policies of member countries and the determination of the best means for safeguarding their interests, both individually and collectively.

44. OPEC devises ways and means of ensuring the stabilization of prices in international oil markets with a view to eliminating harmful and unnecessary fluctuations. Due regard is given at all times to the interests of the producing nations and to the necessity of securing a steady income to the producing countries, an efficient, economic and regular supply of petroleum to consuming nations and a fair return on their capital to those investing in the petroleum industry.

45. The OPEC Fund for International Development assists developing countries in their economic and social development efforts, including the development of projects and programmes as well as technical assistance. The Fund has extended loans and grants to various beneficiaries in a number of developing countries.

46. DLBP States could learn from the experience of OPEC as to the efficacy of an exporters' organization. DLBP States could also contact the OPEC Fund for International Development with a view to exploring possibilities of obtaining finances for projects that would minimize their difficulties, if any, resulting from sea-bed production.

XVI. Permanent Commission for the South Pacific (CPPS)

47. CPPS co-ordinates the marine policies of its member States. It is responsible for the protection, preservation and exploitation of the marine resources, both living and non-living, of the central south-eastern Pacific, and for the protection and preservation of the marine environment. Its objectives include the study of, and co-ordination at the regional level of research on, conservation, exploration and exploitation of marine mineral resources both within and beyond the limits of national jurisdiction. It has been promoting activities and programmes in order to obtain a better understanding of the different legal, scientific, technical, and economic aspects of the utilization of the mineral resources contained in the polymetallic nodules of the sea-bed.

48. CPPS is greatly interested in all matters which relate to the study of problems confronting developing States which are land-based producers and which would be most seriously affected by the production of minerals from the sea-bed, especially bearing in mind the fact that the economies of some of the member countries of CPPS depend substantially on the exports of the same minerals which can be found in polymetallic nodules to be exploited in the Area. This interest is reflected in a number of declarations at the ministerial level and a number of resolutions of CPPS.

49. DLBP States that are members of CPPS could utilize the services of CPPS in the field of marine mineral development. They could also benefit from the efforts of CPPS undertaken pursuant to the declarations and resolutions addressing the issue of possible negative impacts of future sea-bed production on the member countries of CPPS.

XVII. International Council of Scientific Unions (ICSU)

50. There are a number of undertakings of ICSU that are concerned with aspects of exploration geology and with orogenesis. These provide some information about the existence/potential existence of minerals.

51. DLBP States could study the findings of the ICSU endeavours with a view to applying those in their mineral sector.

XVIII. International Institute for Applied Systems Analysis (IIASA)

52. The research work of IIASA is aimed at global policy formulation, in particular in the area of mineral resources. IIASA carried out a study on the future effects of sea-bed mining on the cobalt, copper, manganese and nickel industries and its implications for producing and consuming States. The possible impacts of sea-bed mining were examined in three specific areas: prices and production costs, location of mining activity and the magnitude and geographic distribution of the benefits from mineral production and trade.

53. DLBP States could make use, as far as practicable, of the findings of the IIASA studies on global mineral policy. They could also examine the conclusions of the study on the possible impacts of sea-bed mining with a view to minimizing the negative impacts of sea-bed production on their export earnings or economies, if any.

XIX. International Ocean Institute (IOI)

54. IOI has been organizing a series of training programmes in the management and conservation of marine resources, designed especially for civil servants and managers from developing countries. Three types of programmes have been conducted: programmes dealing with all forms of ocean mining (including offshore oil); those devoted to the issues of exclusive economic zone (EEZ) management; and those covering all uses of the sea in a particular oceanic region for participants only from that region.

55. The training programmes are designed to give participants an overview of the many and varied aspects of the management both of the EEZ and the sea-bed area beyond the limits of national jurisdiction. They attempt to increase awareness of the fact that ocean management adds a new dimension to development strategy and requires broadly interdisciplinary skills, new institutional and legal infrastructures and new forms of local, national, international, intergovernmental and non-governmental organizations and corporations.

56. DLBP States could contact IOI in order to utilize its training services, which might help in dealing with the problems they may encounter as a result of future sea-bed production.

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PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
New York, 11 August to 5 September 1986

STATEMENT ON THE WORK OF SPECIAL COMMISSION 1 SUBMITTED BY THE EUROPEAN ECONOMIC COMMUNITY AND ITS MEMBER STATES

1. In the light of the deliberations of Special Commission 1 on the discussion papers presented by the secretariat and by delegations to help it in fulfilling its mandate, the European Economic Community and its member States wish to set out their position on the issues under consideration in order to assist this Special Commission in reaching conclusions in its work.

2. It is now widely accepted that deep sea-bed mining is not likely to take place in the immediate future, given that the now prevailing low level of prices of the metals to be extracted does not render such activity economically viable. Given the existing low level of demand and oversupply of these metals it has become evident that the decrease in raw material prices over recent years reflects more than a purely cyclical trend. As a consequence it is difficult to predict when, and under what circumstances, the first commercial exploitation of the deep sea-bed will take place.

3. The mandate given to Special Commission 1 by resolution I of the United Nations Conference on the Law of the Sea establishing the Preparatory Commission is concerned with undertaking a thorough analysis of the economic circumstances under which deep sea-bed mining will take place. The uncertainty described above makes it very difficult, if not impossible, to arrive at any specific conclusions at this stage which could be of value to the Authority at a time when deep sea-bed mining is actually taking place. In particular, it should not be assumed that land-based producers will suffer any serious adverse effects. There is also the difficulty of establishing the relationship between cause and effect. Any conclusions or recommendations reached by the Special Commission should not therefore seek explicitly or implicitly to prejudge this question.

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4. For the same reasons it would be premature to recommend specific remedial measures at this stage. In particular, it would not be appropriate to give consideration to any recommendation that proposes automatic mechanisms for the compensation of losses of export earnings or any other system that automatically leads to a financial burden on the budget of the Authority.

5. The question of whether, and how, any remedial measures could be financed is an important one which will have to be considered in the light of the priority accorded to the activities of the Authority, and the funds available, at the time commercial deep sea-bed mining is taking place. It remains the view of the European Economic Community and its member States that the allocation of the budget of the Authority should reflect the significance attached to the establishment of a viable mining operation by the Enterprise. The scope for recommending other schemes and activities will need to take account of this priority, given that it is not within the mandate of this Special Commission, or the Preparatory Commission, to propose supplementary sources of funding which do not form part of the budget of the Auhority.

6. The European Economic Community and its member States are aware of the importance to some developing countries of export earnings from the same minerals which can be recovered from the deep sea-bed and recognize the efforts of these countries to diversify and restructure their economies. Some of the measures described in document LOS/PCN/SCN.1/WP.5, which are the responsibility of a wide range of international agencies, have been established with a view to assisting developing countries in such efforts and to overcoming financial constraints.

7. In the light of this, the European Economic Community and its member States do not favour recommendations which are based on the assumption that remedial measures will necessarily have to be taken by the Authority when deep sea-bed mining takes place, and which propose specific instruments for this purpose. The application of existing instruments to assist efforts of economic adjustment in developing countries which are land-based producers could well prove adequate and more justifiable than the creation of new instruments.

LOS/PCN/SCN.1/1986/CRP.12
27 August 1986

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
New York, 11 August to 5 September 1986

PROPOSAL BY THE GROUP OF 77 ON SPECIAL COMMISSION 1 MATTERS

PROPOSAL FOR THE ESTABLISHMENT OF THE COMPENSATION FUND

PART A

PRINCIPLES

1. (a) In article 151 (10) of the United Nations Convention on the Law of the Sea the Authority is required to establish a system of compensation or take other measures of economic adjustment assistance to assist developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral to the extent that such reduction is caused by activities in the Area.

(b) Resolution I (annex I of the United Nations Convention on the Law of the Sea) requires, inter alia, that the Preparatory Commission undertake studies on the establishment of a compensation fund and submit recommendations to the Authority thereon.

2. Whichever variety of economic relief measure or measures are to be administered or implemented by the Authority, the goal is to minimize the difficulties of the affected developing land-based producer States and to assist them in their economic adjustment.

3. The creation of a compensation fund is one valid and specified option or strategy envisaged by the United Nations Convention on the Law of the Sea that the Authority could adopt in order to provide itself with a reliable system of compensation which will make available the necessary financial resources to meet the costs of the economic relief measure or measures.

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PART B

SOURCES OF FINANCE

4. The Compensation Fund could be financed from the following sources:

(a) A percentage of the revenue from the profits of the Enterprise to be allocated to the resources of the Compensation Fund on a regular basis under provision of article 173 (2) (c);

(b) A percentage of revenue from the profits of other operators in the Area;

(c) Voluntary contributions made by members or other entities.

PART C

USE OF FUNDS

5. Subject to criteria to be drawn up at a later stage, use of the funds would be directed to projects and/or programmes in affected developing land-based producer States with the potential to bring about economic adjustment and capability to counter adverse effects of activities in the Area. Such projects and/or programmes would be directed at areas that include:

(a) Provision of technical assistance;

(b) Diversification of economies;

(c) Establishment of national and/or regional processing plants;

(d) Provision of soft loans and/or grants.

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LOS/PCN/SCN.1/1987/CRP.13
31 July 1987

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY AND
FOR THE INTERNATIONAL TRIBUNAL FOR
THE LAW OF THE SEA
New York, 27 July-21 August 1987

CHAIRMAN'S PRELIMINARY LISTING OF ISSUES ON WHICH FURTHER DISCUSSION IS NEEDED IN SPECIAL COMMISSION 1

1. After examining LOS/PCN/SCN.1/WP.11, which summarizes the work of Special Commission 1 to date, and having consulted with the open-ended Bureau of the Special Commission on 31 July 1987, I would like to present a preliminary listing of issues that require further discussion in the Special Commission in order to conform with our programme of work as laid down in LOS/PCN/SCN.1/1984/CRP.2 and to cover adequately the issues to be dealt with under our programme of work, included in LOS/PCN/SCN.1/1984/CRP.3.

2. The preliminary list is as follows:

(a) Projections of demand for copper, nickel, cobalt and manganese in the year 2000 and beyond (related to item 1.2 (iii) of CRP.3; see LOS/PCN/L.18, para. 13);

(b) Study of specific trade agreements, especially of a bilateral nature, in the context of their role in mineral trade (related to item 2.2 (ii) of CRP.3; see WP.11, para. 16);

(c) Methodology for isolating the effects of sea-bed production from the effects of other factors (related to item 2.2 (iii) of CRP.3; see WP.11, para. 17);

(d) Study of the issue of subsidization in relation to sea-bed mining (related to item 3 of CRP.3; see WP.11, para. 26);

(e) Finalization of the figures mentioned in paragraph 6 of CRP.8, in connection with the quantifiable yardsticks to be used for the identification of developing land-based producer States (DLBPS) likely to be most seriously affected

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by sea-bed production, and introduction of flexibility in paragraph 6 (f) of CRP.8 (related to item 3.2 of CRP.3; see WP.11, para. 30 (i));

(f) Ways of categorizing the DLBPS that are likely to be most seriously affected by sea-bed production (related to item 3.3 of CRP.3; see WP.11, para. 30 (h));

(g) Study of the issue of a system of compensation and/or compensation fund for minimizing the difficulties of DLBPS and helping them to make the necessary economic adjustment (related to items 5.2 and 5.3 of CRP.3; see WP.11, paras. 41-47 and para. 49).

3. With a view to facilitating our work during the current session, and pursuant to a suggestion by the Bureau, I would like to propose the following schedule for discussion of the above issues:

(a) 45th meeting of Special Commission 1 - issues 2 (e) and 2 (g);

(b) 46th meeting of Special Commission 1 - issues 2 (f) and 2 (c);

(c) 47th meeting of Special Commission 1 - issue 2 (b);

(d) 48th meeting of Special Commission 1 - issues 2 (d) and 2 (a).

The schedule conforms, in general, to the programme of work for this session, as specified in our 41st meeting. The interrelated nature of the issues, however, should be kept in view.

4. I would like to urge delegations to offer comments and suggestions on the preliminary list and the schedule above. Bearing in mind the preliminary nature of the list, I would also like to invite delegations to complete the list in conformity with CRP.2 and CRP.3.

LOS/PCN/SCN.1/1987/CRP.14
18 August 1987

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
New York, 27 July-21 August 1987

CHAIRMAN'S SUGGESTIONS ABOUT FORMULATIONS TO CATEGORIZE SERIOUS ADVERSE EFFECTS OF SEA-BED MINING ON THE EXPORT EARNINGS OR ECONOMIES OF DEVELOPING LAND-BASED PRODUCER STATES

1. In LOS/PCN/SCN.1/1985/CRP.8, paragraph 11, I have suggested certain formulations which could be used to identify developing land-based producer States (DLBPS) that are likely to be most seriously affected by sea-bed production.

2. I have also indicated, however, that the DLBPS which would be provisionally identified as likely to be most seriously affected, may not be the same ones which, ex-post after the sea-bed production occurs, would be identified as seriously affected actually. The ex post identification would have to be done by the Authority, taking into account the actual effects of sea-bed production on the export earnings or economies of the DLBPS concerned.

3. It is, therefore, essential to agree on the formulations to be used by the Authority to determine, when sea-bed mining occurs, whether or not the effects on the export earnings or economies of the DLBPS concerned are serious.

4. Based on the discussion in Special Commission 1, I suggest, for the consideration of the Special Commission, the following formulations to categorize serious adverse effects:

(a) The adverse effects on the export earnings of DLBPS could be considered to be serious if, in the year sea-bed production occurs:

(i) the price of any of the four minerals concerned - copper, nickel, cobalt and manganese - falls by an average of (5 per cent) from the price of these minerals in the previous year; or

(ii) the volume of exports of any of the four minerals from the DLBPS, provisionally identified previously, falls by (5 per cent); or

/...

(iii) the export earnings of the DLBPS, provisionally identified previously, from the four minerals falls by (5 per cent).

(b) The adverse effects on the economies of DLBPS could be considered to be serious if, in the year sea-bed production occurs:

(i) the national income of the DLBPS concerned falls by (1 per cent) from the previous year; or

(ii) the rate of economic growth of the DLBPS concerned falls by (1) percentage point; or

(iii) the rate of unemployment in the DLBPS concerned increases by (1) percentage point;

(iv) the foreign exchange reserves of the DLBPS concerned fall by (5 per cent).

5. After sea-bed mining occurs, if the observed effects on the export earnings or economies of the DLBPS concerned are of an extent more than, or equal to, that specified in paragraph 4 above, the Authority shall carry out an in-depth study the outline of which has been presented in LOS/PCN/SCN.1/1985/CRP.9, paragraph 9. This in-depth study will include a thorough assessment of the effects of sea-bed production in the area on the DLBPS concerned, and the associated problems. The study will be carried out on a case-by-case basis; the cases will pertain to particular DLBPS and particular minerals. In the course of the study, one of the most important matters that would be addressed is the determination of whether, and to what extent, the observed serious effects have been caused by sea-bed production, by isolating the effects of other possible factors, such as:

(i) general economic conditions in the DLBPS concerned;

(ii) situation in the metal market;

(iii) supply from and cost of production of metals from other sources, e.g., newly developed deposits on land, marine minerals within national jurisdiction;

(iv) technological development;

(v) substitution.

6. The determination by the Authority of whether, and to what extent, the serious adverse effects have been caused by sea-bed production, along with the other findings of the in-depth study will form the basis for the application of appropriate remedial measures as recommended by the Authority.

LOS/PCN/SCN.1/1989/CRP.15
14 March 1989

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
Kingston, 27 February-23 March 1989

DRAFT RECOMMENDATION ON THE ORDERLY AND RATIONAL MANAGEMENT OF THE RESOURCES OF THE AREA: PROPOSAL BY AUSTRALIA

Recognizing that the subsidized exploitation of the resources of the Area is a factor likely to exacerbate the adverse effects on developing land-based producer States, and that the economic viability of the deep sea-bed mining régime would be seriously threatened by subsidized mining operations within the Area, Special Commission 1 recommends:

1. That the International Sea-Bed Authority take all steps which may be necessary to ensure that the development of the resources of the Area is carried out, inter alia, in an orderly and economically rational manner as provided in articles 150, 151 and Annex III, article 13, paragraph 1 (f) of the Convention, and that there is adequate surveillance of States Parties' compliance with their obligations under those provisions.

2. That, without prejudice to other specific provisions of the Mining Code, the Authority develop rules, regulations and procedures to ensure that the exploitation of the resources of the Area is carried out on an economically viable basis and in accordance with sound commercial principles.

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LOS/PCN/SCN.1/1989/CRP.16
20 March 1989

ORIGINAL : ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
Kingston, 27 February-23 March 1989

PROVISIONAL CONCLUSIONS OF THE DELIBERATIONS OF SPECIAL COMMISSION 1 WHICH CAN FORM THE BASIS OF ITS RECOMMENDATIONS TO THE INTRNATIONAL SEA-BED AUTHORITY

(SUGGESTIONS BY THE CHAIRMAN)

1. Special Commission 1 is mandated by resolution I, paragraph 5(i), to undertake studies on the problems which would be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the international sea-bed Area with a view to minimizing their difficulties and helping them to make the necessary economic adjustment, including studies on the establishment of a compensation fund, and submit recommendations to the International Sea-Bed Authority thereon.

2. Since the beginning of its deliberations in 1984, Special Commission 1 has discussed a number of issues related to its mandate as outlined in document LOS/PCN/SCN.1/1984/CRP.3. In that document the following issues have been identified as subjects falling under the programme of work of SCN.1.

Item 1: Projection of production from the Area.

Item 2: Relationship between production from the Area and existing land-based production.

Item 3: Identification, definition and measurement of effects on developing land-based producer States.

Item 4: Determination of the problems/difficulties that would be encountered by the affected developing land-based producer States.

Item 5: Formulation of measures to minimize problems/difficulties of affected developing land-based producer States.

3. Following its deliberations on those issues, Special Commission 1 has considered that the next step of its task would be the formulation of provisional conclusions which can form the basis of its recommendations to the Authority, taking into account, *inter alia*, the areas of agreement identified in document LOS/PCN/SCN.1/WP.11; the purpose of the present document is to help Special Commission 1 in this regard. (In the following list of provisional conclusions, reference to the appropriate paragraphs of document WP.11 are included within parentheses; proper citations are also made of other relevant documents.) It should be emphasized that the present listing of the provisional conclusions contained in the Annex is neither exhaustive nor definitive.

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ANNEX

SECTION 1

Projection of production from the Area

Provisional conclusion 1

On the question whether the Authority should study, in addition to polymetallic nodules, other sea-bed minerals:

> The Authority should, at the initial stage, concentrate its work on polymetallic nodules, at the same time keeping in view the trends and developments regarding sea-bed minerals other than polymetallic nodules, for example, polymetallic sulphides, cobalt-rich manganese crusts, etc. (para. 14)

Provisional conclusion 2

On the question of which of the metals and the non-metallics contained in polymetallic nodules the Authority should deal with:

> The Authority should, at the initial stage, concentrate on copper, nickel, cobalt and manganese but it should keep in view the trends and developments regarding the other metals and non metallics contained in polymetallic nodules. (para. 15)

Provisional conclusion 3

> The Authority should carry out forecasting of the four minerals concerned with and without sea-bed production, at least 5 or 10 years ahead of the planned commencement of commercial production from the Area. (para. 10)

SECTION 2

Assessment of relationship between production from the Area and existing land-based production

Provisional conclusion 4

On the question whether the Authority should assess the relationship between production from the Area and existing land-based production on a mineral-by-mineral basis:

> The Authority should carry out a mineral-by-mineral assessment, especially for the four minerals specified in Provisional conclusion 2 above. (para. 18)

Provisional conclusion 5

The Authority should adopt a long-term (more than 10 years) framework of assessment, on an on-going basis; however, short-term (less than 5 years) and medium-term (between 5 to 10 years) frameworks should also be kept under consideration. (para. 19 (a))

Provisional conclusion 6

In the course of the above assessment, the Authority should study the supply-demand situation as pertaining to the individual land-based producer States.

Provisional conclusion 7

In studying the supply-demand situation mentioned in Provisional conclusion 6 above, the Authority should take into account transactions in both so-called "open market" and "controlled market". The extent to which a particular developing land-based producer State carries out trade in "open market" and "controlled market" should be determined. (para. 19 (b)).

Provisional conclusion 8

In studying the supply-demand situation, mentioned in Provisional conclusion 6 above the Authority should study the terms and conditions of specific trade agreements that a particular developing land-based producer State has with other States. (para. 21(c))

SECTION 3

Identification, definition and measurement of effects on developing land-based producer States

Provisional conclusion 9

With regard to the effects of sea-bed production:

The Authority should consider the effects of sea-bed production in the Area on export earnings or economies of developing land-based producer States. (para. 27(a))

Provisional conclusion 10

In studying the above effects, the Authority should bear in mind that the effects have to result from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by the exploration for, and exploitation of the resources of the Area. (para 27(b)

/...

Provisional conclusion 11

On the question of whether the effects of sea-bed production should be considered on a State-by-State basis:

> The authority should give consideration on a State-by-State basis. (para. 28)

Provisional conclusion 12

With regard to the issue of isolating the effects of sea-bed production from those of other factors on price and volume of exports of a mineral:

> The Authority should establish mechanisms for continuing studies of the minerals concerned and for collecting the relevant data and information. (para. 20)

Provisional conclusion 13

As to the methodology of isolating the effects of sea-bed production:

> The Authority should devise an agreed methodology to determine the extent of reduction in the price of an affected mineral or in the volume of exports of that mineral caused by sea-bed production. (para 21(a))

Provisional conclusion 14

> In devising such a methodology the Authority should take into account other factors that may have an effect on price or volume of exports of the mineral concerned, e.g., (i) general economic conditions in the developing land-based producer States concerned; (ii) situation in the metal market; (iii) supply from, and cost of production of metals from other sources, e.g. newly developed deposits on land, marine minerals within national jurisdiction; (iv) technological development; (v) substitution; (vi) recycling; (vii) government policies; (viii) change in the consumption patterns; (ix) exhaustion of land-based deposits. (para. 21(b))

Provisional conclusion 15

> The Authority should study bilateral trade agreements to examine whether cause and effect relationships could be established in a relatively direct manner. (para. 21(c)

Provisional conclusion 16

> The Authority should quantify the effects of sea-bed production on export earnings and economies of a developing land-based producer State. While it may be relatively easier to quantify the effects on export earnings, the Authority should make utmost efforts to quantify the effects on economies as well. (para. 29(a))

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Provisional conclusion 17

With regard to effects on economies:

The Authority should take into consideration various factors such as: (i) direct reduction in the income of the developing land-based producer State, (ii) unemployment, (iii) foreign exchange unavailability, (iv) reduced government revenues and reduced investible funds for development, (v) side effects, e.g. reduced production of accessory minerals, and (vi) multiplier effects reflecting the linkages of the mineral sectors concerned with other sectors. (para. 29(b))

Provisional conclusion 18

The Authority should carry out the measurement of actual effects after sea-bed production occurs. (para. 29(c))

Provisional conclusion 19

With regard to the effects and the associated problems:

The Authority should carry out an in-depth investigation on specific countries and specific minerals, following the outline as below:

(a) Identification of resources of the Area exploited, and the minerals extracted from these resources.

(b) Estimation of volume of production of each mineral from the Area.

(c) Formulation of methodology to establish to what extent effects on price or volume of exports of a mineral of a developing land-based producer State are caused by production of the mineral from the Area, taking into account relevant factors mentioned in provisional conclusion 14 above.

(d) Determination of extent of transactions in open market and controlled market.

(e) Assessment of effects felt through the operation of open market and those felt through the operation of controlled market, especially through changes in bilateral trade arrangements.

(f) Quantification of effects on economies, taking into account the direct effects, side effects and multiplier effects.

(g) Investigation of problems associated with the effects, including assessment of capabilities of the affected State to counter or control the effects. (para. 35(d))

Provisional conclusion 20

Before sea-bed production occurs:

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The Authority should attempt to identify periodically, developing land-based producer States likely to be affected by sea-bed production. For this identification exercise, the Authority should apply certain criteria. (para. 31(i))

Provisional conclusion 21

The above criteria should be related to export earnings or economies of developing land-based producer States, in order to determine the importance to, or the dependence of a developing land-based producer State on copper, nickel, cobalt and manganese for its export earnings or for its economy. (para. 30)b))

Provisional conclusion 22

The above criteria should be applied on the basis of relevant statistics. (para. 30(c))

Provisional conclusion 23

The Authority should use quantifiable yardsticks related to the above criteria. (para. 30(d))

Provisional conclusion 24

With regard to the criteria of export earnings or economies:

The Authority should use several quantifiable yardsticks: (i) absolute value of exports of the four minerals, (ii) value of export earnings from the four minerals in relation to total export earnings, (iii) absolute amount of production of the four minerals, (iv) value of production of the four minerals in relation to total Gross Domestic Product (GDP) or total Gross National Product (GNP), (v) value of export earnings from the four minerals in relation to GDP or GNP, (vi) some combination of the above quantifiable yardsticks related to export earnings and those related to economies. (para. 30(e))

Provisional conclusion 25

The Authority should properly measure the above yardsticks statistically. (para. 30(f))

Provisional conclusion 26

The Authority should express the above quantifiable yardsticks in terms of a formula. (para. 30(g))

Provisional conclusion 27

The Authority should use the idea of dependency thresholds of a given yardstick for the purpose of categorizing the developing land-based producer States that are likely to be affected, seriously affected, and most seriously affected by sea-bed production.

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Provisional conclusion 28*

With regard to the issue of the concrete formulation of the criteria for the identification of developing land-based producer States likely to be most seriously affected by sea-bed production:

The Authority should be guided by the following figures with respect to dependency thresholds:

A developing land-based producer State should be considered likely to be most seriously affected by sea-bed production if:

(i) it exports an average of US$100 million or more of the four minerals per year during the last 5 years before production authorizations are issued to the sea-bed miners; or

(ii) it earns an average of 10 per cent or more of its total export earnings from these four minerals per year during the last 5 years before production authorizations are issued to the sea-bed miners; or

(iii) it produces an average or more of 100,000 tons of copper, or 50,000 tons of nickel, or 10,000 tons of cobalt, or 50,000 tons of manganese per year during the last 5 years before production authorizations are issued to the sea-bed miners; or

(iv) its average production of the four minerals per year during the last 5 years before production authorizations are issued to the sea-bed miners represents at least 10% of its GDP; or

(v) its exports of the four minerals account for 5% or more of its GDP per year during the last 5 years before production authorizations are issued to the sea-bed miners. para. 30(n))

Provisional conclusion 29*

The Authority should consider lowering the figures with respect to dependency thresholds taking into account certain factors: Production capabilities of a particular State for one or more of the four minerals concerned, projectd future production, reserves, GNP and per capita income, population, size of the area of the particular State, and geographical locations of the State. (para. 30(w)

Provisional conclusion 30

With regard to the timing of the identification of developing land-based producer States likely to be most seriously affected:

The Authority should, immediately after it begins to function, carry out a preliminary identification of such States by applying the criteria of identification specified above.

Provisional conclusion 31

The Authority should carry out a final identification of such States at a time rather close to the time of the earliest commercial production from in the Area by applying the criteria of identification specified above. (para 31(b))

SECTION 4

Determination of the problems/difficulties that would be encountered by the affected land-based producer States

Provisional conclusion 32

The problems of developing land-based producer States would arise, to a great extent, from the limitations of the capabilities of such States to counter or control the effects of sea-bed production on their export earnings or economies; in this context:

The Authority should study the extent of the limitations of developing land-based producer States, bearing in mind that these limitations may vary from State to State, depending on various factors specified in Provisional conclusion 29 above. (para. 33)

Provisional conclusion 33

In the above context, the Authority should study why the adverse effects of sea-bed production would cause more problems to certain developing land-based producer States as compared to other land-based producers. (para. 33)

SECTION 5

Formulation of measures to minimize problems/difficulties of affected developing land-based producer States:

Provisional conclusion 34

The Authority should minimize difficulties of affected, seriously affected, and most seriously affected, DLBPS and help them to make the necessary economic adjustment when sea-bed production occurs. (para. 47(a))

Provisional conclusion 35

If a commodity focus would be adopted, for the purpose of implementing Provisional conclusion 34 above:

The Authority should consider preferably the conclusion of commodity agreements based on international co-operation among producers and consumers. (para. 47(e))

Provisional conclusion 36

The Assembly of the Authority shall establish a system of compensation or take other measures of economic adjustment assistance including co-operation with specialized agencies and other international organizations to assist developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area. (articles 151(10) and 160(2)(e) of the Convention)

Provisional conclusion 37

For the purpose of Provisional conclusion 36 above, the Council of the Authority shall make recommendations to the assembly for a system of compensation or other measures of economic adjustments assistance. (article 162(2)(n) of the Convention)

Provisional conclusion 38

For the purpose of Provisional conclusion 37 above, the Economic Planning Commission of the Authority shall propose to the Council a system of compensation or other measures of economic adjustment assistance. (article 164(2)(d) of the Convention)

Provisional conclusion 39

With regard to existing economic measures:

The Authority should provide assistance to affected DLBPS under its auspices, and not outside its ambit. Even in the case of existing economic measures, the Authority is mandated in article 151(10), to co-operate with specialized agencies and other international organizations. (para. 48(h))

Provisional conclusion 40

The Authority should assess all of the existing measures, programmes and activities at the international, multilateral, regional and subregional levels in order to determine how useful they are in minimizing the difficulties of developing land-based producer States suffering adverse effects as a result of sea-bed production, and of developing land-based producer States likely to be adversely affected by sea-bed production. (para. 48(b))

Provisional conclusion 41

The Authority should keep abreast of any developments in the international, multilateral, regional and subregional fora with regard to economic measures that could be of relevance for its purpose. (para. 48(e))

/...

Provisional conclusion 42

The Authority should make appropriate co-operative arrangements with the United Nations, its specialized agencies, and other international and multilateral organizations for the purpose of formulating practical modalities to implement Provisional conclusions 36, 37 and 38 above. (para. 48(f))

Provisional conclusion 43

The Authority should encourage developing land-based producer States to make use of available remedial measures currently being implemented by various international, multilateral, regional and subregional organizations, both intergovernmental and non-governmental, that may minimize their difficulties and help them to make the necessary economic adjustments. (CRP.10)

Provisional conclusion 44*

The Authority could consider formulating a measure of its own by creating a compensation fund as envisaged in article 171(f) of the Convention and paragraph 5(i) of Resolution I. CRP.12)

Provisional conclusion 45*

If such a compensation fund is created, it could be financed from the following sources:

(i) A percentage of the revenues from the profits of the Enterprise to be allocated to the resources of the compensation fund on a regular basis under the provisions contained in article 173 (2) (c);

(ii) A percentage of revenues from the profits of other operators in the Area;

(iii) Voluntary contributions made by Members or other entities. (CRP.12)

Provisional conclusion 46*

If such a compensation fund is created, subject to criteria to be drawn up by the Authority, use of the funds would be directed to projects and/or programmes in affected developing land-based producer States with the potential to bring about economic adjustment and capability to counter adverse effects of activities in the Area. Such projects and/or programmes would be directed at areas that include:

(i) Provision of technical assistance;

(ii) Diversification of economies;

(iii) Establishment of national and/or regional processing plants;

(iv) Provision of soft loans and/or grants. (CRP.12)

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Provisional conclusion 47*

The Authority could consider formulating a measure of its own by concluding, in accordance with its general principles, and on the basis of a model agreement approved by the Council, bilateral agreements between a developing traditional exporter of the affected mineral and a State producing a similar mineral from the resources of the Area which traditionally used to import that mineral from the country in question. (WP.8)

Provisional conclusion 48*

If such bilateral agreements are concluded, during a ten-year preferential period established from a date determined by the parties to the agreements, the measures envisaged in the agreements shall be implemented to compensate for the unfavourable effects on the export earnings of the developing country in question. Another preferential period (period of the validity of the agreement) may be established by agreement between the parties to the agreement. (WP.8)

Provisional conclusion 49*

If such bilateral agreements are concluded, the measures to be agreed by the parties to compensate for the unfavourable effects on the developing countries' export earnings shall specify that the developed traditional importers concerned are to maintain a fixed average annual level for their purchases during the preferential period mentioned in Provisional conclusion 48 above. During the first five years, this level will not be lower than the average annual level for the five base years and then the fixed level of purchases will be gradually reduced. In this connection, the excess of purchases over the level for the base period which occurred between the base and the preferential periods shall be taken into account. The average annual level for the five base years, _inter alia_, shall be negotiated by the parties concerned. (WP.8)

Provisional conclusion 50*

Recognising that the subsidised exploitation of the resources of the Area is a factor likely to exacerbate the adverse effects on developing land-based producer States, and that the economic viability of the deep sea-bed mining regime would be seriously threatened by subsidised mining operations within the Area:

(a) the Authority should take all steps which may be necessary to ensure that the development of the resources of the Area is carried out, _inter alia_, in an orderly and economically rational manner as provided in articles 150, 151 and Annex III, article 13, paragraph 1(f) of the Convention, and that there is adequate surveillance of States Parties' compliance with their obligations under those provisions;

(b) without prejudice to other specific provisions of the Mining Code, the Authority should develop rules, regulations and procedures to ensure that the exploitation of the resources of the Area is carried out on an economically viable basis and in accordance with sound commercial principles. CRP.15)

Provisional conclusion 51

A developing land-based producer State which considers itself affected by sea-bed production should apply to the Authority, and in the application should include the following:

(a) It must identify that it is a developing land-based producer State by providing statistics on production, volume of exports, export earnings from one or more of the four minerals concerned;

(b) It must identify the changes that it feels occurred because of sea-bed production: decrease in price, decrease in volume of exports, decrease in export earnings, other effects on its economy i.e., decrease in GDP or GNP, decrease in rate of growth of GDP or GNP, decrease in level of employment, decrease in foreign exchange reserves etc.;

(c) It must indicate how it considers that the above effects have been as a result of sea-bed production and not as a result of other factors;

(d) It must indicate what kind of remedial measures it requires, and to what extent.

Provisional conclusion 52

Having received the application mentioned in Provisional conclusion 51 above,

(a) The Authority shall determine whether production, volume of exports, export earnings from one or more of the four minerals concerned, in the case of the developing land-based producer State in question, exceeds the dependency thresholds specified in Provisional conclusion 28 above.

(b) If the dependency thresholds are exceeded, then the Authority shall determine whether the effects that are considered to have resulted from sea-bed production exceeds any of the levels specified below (referred to as the trigger levels*):

(i) the price of any of the four minerals concerned falls by an average of (5 per cent) from the price of these minerals in the previous year; or

(ii) the volume of exports of any of the four minerals from the developing land-based producer State in question falls by (5 per cent) from that in the previous year; or

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(iii) the export earnings of the developing land-based producer State in question from the four minerals falls by (5 per cent) from that in the previous year; or

(iv) the national income of the developing land-based producer State in question falls by (1 per cent) from the previous year; or

(v) the rate of economic growth of the developing land based producer State in question falls by (1) percentage point from the previous year; or

(vi) the rate of unemployment in the developing land-based producer State in question increases by (1) percentage point from the previous year; or

(vii) the foreign exchange reserves of the developing land-based producer State in question fall by (5 per cent) from the previous year.

(c) If the effects exceed the levels specified above, the Authority shall undertake studies on a case-by-case basis in order to determine whether and to what extent the effects resulted from sea-bed production in the Area, to decide on the necessary remedial measures.

Provisional conclusion 53

The application mentioned in Provisional conclusion 51 above should be submitted to the Economic Planning Commission of the Authority. The determinations and studies mentioned in Provisional conclusion 52 above should be carried out by the Economic Planning commission. After such determinations and studies are concluded, the Economic Planning Commission shall make the recommendations to the Council that are necessary for the application of the requisite remedial measures in specific cases. (article 164(2)(d) of the Convention)

Provisional conclusion 54

A developing land-based producer State which considers itself likely to be affected by sea-bed production, should apply to the Authority, and in the application it should include the following:

(a) It must identify that it is a developing land-based producer State by providing statistics on production, volume of exports, export earnings of one or more of the four minerals concerned.

(b) It must present projections of its production, volume of exports, export earnings from one or more of the four minerals concerned, in a situation where sea-bed production did not occur.

(c) It must present projections of the variables above, in a situation where sea-bed production did occur. (article 164(2)(c) of the Convention)

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Provisional conclusion 55

Having received the application, mentioned in Provisional conclusion 54 above,

(a) The Authority shall undertake studies on a case-by-case basis on the potential effects on the developing land-producer-State in question under various projections for the levels of sea-bed production.

(b) If the above studies warrant it, the Authority shall then recommend measures to minimize the potential effects.

Provisional conclusion 56

The application mentioned in Provisional conclusion 54 above, should be submitted to the Economic Planning Commission of the Authority. The Economic Planning Commission should carry out the studies mentioned in Provisional conclusion 55 above. If the studies warrant it, the Economic Planning Commission shall make appropriate recommendations to the Council. (article 164(2)(c)

Provisional conclusion 57

The Council shall take, upon the recommendation of the Economic Planning Commission, necessary and appropriate measures to provide protection to the developing land-based producer State from the adverse effects. (article 162(2)(m)

Section 6

Background requirements: necessary data and information

Provisional conclusion 58

For the purposes of discharging its responsibilities in the most efficient manner, the Authority should collect and maintain data and information in the following three subject areas: (a) minerals, including sea-bed minerals; (b) developing land-based producer States; and (c) existing international or multinational economic measures which could be of assistance to developing land-based producer States.

Provisional conclusion 59

With respect to the subject area of minerals, including sea-bed minerals:

The Authority should collect and maintain data and information on the trends and developments with regard to the economic exploitability of polymetallic nodules, polymetallic sulfides, cobalt-rich manganese crusts, and any other sea-bed minerals whose occurence is known. In the initial period the Authority should concentrate on polymetallic

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nodules. The Authority should collect and maintain data and information on the trends and developments with regard to the economic exploitability of the metals and the non-metallic nodules contained in polymetallic nodules. In the initial period the Authority should concentrate on copper, nickel, cobalt and manganese.

Provisional conclusion 60

With regard to the sea-bed minerals:

The Authority should collect and maintain information and data on the following categories: (a) known occurence in the various locations of the sea-bed categorized by latitudes and longitudes; (b) estimates of abundance and metal content in each location, if available in the public domain; (c) characteristics of micro-topography in each location, if available in the public domain;(d) estimates of reserves, potential reserves or resources in various areas of the sea-bed; (e) ... (the Special Commission may wish to fill in these gaps).

Provisional conclusion 61

With regard to minerals in general:

The Authority should collect and maintain data and information on the following categories: (a) production, by country and world total; (b) consumption, by country and world total; (c) exports, and re-exports, by products of various stages of processing, by country and world total; (d) imports, by products of various stages of processing, by country and world total; (e) prices, by type of commodity in various terminal markets; (f) production capacity, by country and world total; (g) planned capacity expansion, by country and world total; (h) planned new mine development by country and world total; (i) stocks (producers' stocks, consumers' stocks, dealers' stocks), by country and world total; (j) reserves, by country and world total; (k) resources , by country and world total; (wherever applicable data and information should be on an annual basis starting from 1980 onwards); (l)... (the Special Commission may wish to fill in these gaps). With regard to these minerals the Authority should also collect and maintain data and information on costs of production from various deposits.

Provisional conclusion 62

The Authority should collect and maintain information and data on the minerals for the purposes of keeping abreast of the minerals situation. In this connection, in addition to the categories mentioned in Provisional conclusion 61 above, the Authority should have information and data on: (a) secondary production and recycling, including the trends and developments in the recent past and the current period as well as the possibilities in the medium-term future; (b) substitution, including the trends and developments in the recent past and current period as well as the possibilities in the medium-term future.

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Provisional conclusion 63

With regard to the minerals:

> The Authority should also collect and maintain data and information on: (a) the extent of bilateral trade including quantities and values of traded commodities among various trading partners; (b) the extent of barter trade including the specification of commodities exchanged in barter, and of the barter trade partners; (c) bilateral trade agreements and their salient features; (d) multilateral trade agreements and their salient features; (e) commodity agreements or agreements of a similar nature and their salient features;
> (f) commodity associations, study groups, etc. and their salient features; (g) ... (the Special Commission may wish to fill in these gaps).

Provisional conclusion 64

With regard to the developing land-based producer States:

> The Authority should collect and maintain information on the following categories: (a) their production of the four minerals concerned;
> (b) their consumption of the four minerals concerned; (c) their exports of the four minerals concerned; (d) their imports of the four minerals concerned; (e) the prices they receive for their exports;
> (f) their gross domestic product and/or gross national product;
> (g) their total exports of all goods and services; (h) rate of growth of their GDP or GNP; (i) their total employment in the economy;
> (j) their employment in the four mineral industries concerned;
> (k) their government revenues from the four minerals concerned;
> (l) the extent of their reserves of the four minerals concerned; (m) the extent of their resources in the four minerals concerned; (n) the estimated costs of production from their deposits; (o) their trade agreements with trading partners and the salient features of these agreements; (p) the direction of their trade in the four nminerals concerned; (q) ... (the Special Commission may wish to fill in these gaps).

Provisional conclusion 65

> The Authority should develop and maintain cost-effective databases with respect to the above data and information. For the purpose of developing and maintaining such databases, wherever possible the Authority should extract data and information from the public domain and from States through voluntary submissions by themselves, or submission by them on request.

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Provisional conclusion 66

The Authority should make available data and information to the States in appropriate forms, as requested.

* The issues of system of compensation/compensation fund, the Authority's own measures of economic adjustment assistance, subsidization of sea-bed mining, and dependency thresholds and trigger thresholds are still under consideration in the *Ad Hoc* Working Group of Special Commission 1.

LOS/PCN/SCN.1/1990/CRP.16/Rev.1
2 August 1990

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY AND FOR
THE INTERNATIONAL TRIBUNAL FOR THE LAW
OF THE SEA
Special Commission 1
New York, 13-31 August 1990

PROVISIONAL CONCLUSIONS OF THE DELIBERATIONS OF SPECIAL COMMISSION 1 WHICH CAN FORM THE BASIS OF ITS RECOMMENDATIONS TO THE INTERNATIONAL SEA-BED AUTHORITY (REVISED SUGGESTIONS BY THE CHAIRMAN)

INTRODUCTION

1. Special Commission 1 is mandated by resolution I, paragraph 5 (i), to undertake studies on the problems which would be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the international sea-bed area with a view to minimizing their difficulties and helping them to make the necessary economic adjustment, including studies on the establishment of a compensation fund, and submit recommendations to the International Sea-Bed Authority thereon.

2. Since the beginning of its deliberations in 1984, Special Commission 1 has discussed a number of issues related to its mandate as outlined in LOS/PCN/SCN.1/1984/CRP.3. In that document the following issues were identified as subjects falling under the programme of work of the Special Commission:

Item 1. Projection of production from the Area;

Item 2. Relationship between production from the Area and existing land-based production;

Item 3. Identification, definition and measurement of effects on developing land-based producer States;

Item 4. Determination of the problems/difficulties that would be encountered by the affected developing land-based producer States;

Item 5. Formulation of measures to minimize problems/difficulties of affected developing land-based producer States.

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3. Following its deliberations on those issues, Special Commission 1 has considered that the next step of its task would be the formulation of provisional conclusions which can form the basis of its recommendations to the Authority. Document LOS/PCN/SCN.1/1989/CRP.16 was prepared with the purpose of helping the Special Commission in this regard. During the 1989 summer meeting and the eighth session of the Preparatory Commission the provisional conclusions in that document underwent a "first reading" by delegations. The following list of the provisional conclusions has been prepared incorporating the comments and suggestions of delegations in the course of the "first reading". Since there has been a considerable rearrangement of the provisional conclusions in the present document as compared to CRP.16, for the sake of convenience, the appendix to the provisional conclusions contains a table demonstrating the rearrangement.

PROVISIONAL CONCLUSIONS

Chapeau

In carrying out any studies or assessment, upon request from the developing land-based producer States concerned, in connection with examining any situation likely to lead to adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected mineral, or in the volume of exports of that mineral, to the extent that such reduction is caused by the activities in the Area, in studying the problems which would be encountered by developing land-based producer States which are likely to be most seriously affected by activities in the Area with a view to minimizing their difficulties and helping them to make the necessary economic adjustment, and in connection with assisting developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, the Authority should: (a) make use of pertinent data, information, analysis, studies and forecasts available from national, subregional, regional, interregional or global organizations, intergovernmental or non-governmental, public or private, without prejudice to the Authority conducting its own studies or assessment; and (b) conduct the studies or assessment in the most cost-effective manner in co-operation with, and obtaining support from, the relevant organizations.

Section 1. PROJECTION OF PRODUCTION FROM THE AREA

With reference to articles 1 (1) (3), 133, 151 (7), A3/13 (6) (e) and R2/1 (d) of the Convention, and with a view to preparing itself for the purpose of assisting developing land-based producer States, the Authority needs to identify which sea-bed minerals would be exploited, and which metals and non-metallic elements would be extracted from the sea-bed minerals.

Provisional conclusion 1

Minerals of the Area and metals contained in those minerals

(a) The Authority should concentrate its work on polymetallic nodules, including the projected timing of commercial production from the Area. It should also keep in view the trends and developments regarding sea-bed minerals other than polymetallic nodules, for example, polymetallic sulfides, cobalt-rich crusts, etc.

(b) The Authority should concentrate its work on copper, nickel, cobalt and manganese to be extracted from polymetallic nodules. It should also keep in view the trends and developments regarding the other metals and non-metallic elements contained in polymetallic nodules.

Provisional conclusion 2

Forecast of mineral situation with or without sea-bed production

Based on the available data and information as well as existing forecasts, the Authority should carry out forecasting, in accordance with the provisions of the *chapeau*, of the mineral situation with and without sea-bed production, which would include, *inter alia*, supply, demand and price of the four metals concerned. The first forecast should be carried out at least five years before the planned commencement of commercial production from the Area.

Section 2. APPLICATION BY DEVELOPING LAND-BASED PRODUCER STATES AND CONSIDERATION OF APPLICATION

If there are potential or actual effects, as the case may be, of sea-bed production on developing land-based producer States, such States would bring this to the attention of the Authority.

Provisional conclusion 3

Application by developing land-based producer States likely to suffer adverse effects from sea-bed production

(a) Before the commencement of commercial production from the Area, a developing land-based producer State which considers itself likely to suffer adverse effects from future sea-bed production could submit an application to the Economic Planning Commission in accordance with articles 164 (2) (c) and 151 (10) of the Convention, and in the application it should include the following:

(i) It must identify that it is a developing land-based producer State by providing statistics on production, volume of exports and export earnings of one or more of the four metals concerned;

(ii) It must present projections of its production, volume of exports and export earnings from one or more of the four metals concerned, in a situation where sea-bed production did not occur;

(iii) It must present projections of the above variables, in a situation where sea-bed production did occur.

(b) Such applications may be submitted at any time after the commencement of the functioning of the Authority, initially, periodically, or at the time of the issuance of the first production authorization(s).

(c) Having received the application, the Economic Planning Commission should determine whether sufficient evidence exists to carry out an in-depth investigation by applying the criteria specified in provisional conclusion 5 below.

(d) If the Economic Planning Commission determines that an in-depth investigation needs to be carried out, it shall undertake, pursuant to article 164 (2) (c) of the Convention, such an investigation, in accordance with the provisions of the *chapeau*, along the lines suggested in provisional conclusion 6 below, with a view to determining necessary and appropriate measures to provide protection from the adverse effects, in accordance with article 162 (2) (m) of the Convention, priority being accorded to the developing land-based producer States likely to be most seriously affected, with a view to minimizing their difficulties and assisting them in their economic adjustment, in accordance with article 151 (10) of the Convention.

Provisional conclusion 4

Application by developing land-based producer States which consider themselves affected by sea-bed production

(a) After the commencement of commercial production from the Area, a developing land-based producer State which considers itself affected by sea-bed production could submit an application to the Economic Planning Commission, and in the application should include the following:

(i) It must identify that it is a developing land-based producer State by providing statistics on production, volume of exports and export earnings from one or more of the four metals concerned;

(ii) It must identify the changes that it feels occurred because of sea-bed production: decrease in price, decrease in volume of exports, decrease in export earnings, other effects on its economy, i.e., decrease in GDP or GNP, decrease in rate of growth of GDP or GNP, decrease in level of employment, decrease in foreign exchange reserves, etc.;

(iii) It must indicate how it considers that the above effects have been brought about as a result of sea-bed production and not as a result of other factors;

(iv) It must indicate what kind of assistance measures it requires, and to what extent.

(b) Having received the application, the Economic Planning Commission shall make a determination as to whether sufficient evidence exists to carry out an in-depth investigation by applying the criteria specified in provisional conclusion 5 below.

(c) If the Economic Planning Commission determines that an in-depth investigation needs to be carried out, it shall undertake such an investigation, in accordance with the provisions of the chapeau, along the lines suggested in provisional conclusion 6 below, with a view to determining appropriate measures to assist the developing land-based producer State concerned.

Provisional conclusion 5

Criteria for undertaking in-depth investigation with a view to determining appropriate measures

(a) The criteria mentioned in provisional conclusions 3 (c) and 4 (b) above should be related to export earnings or economies of developing land-based producer States, in order to determine the vulnerability of a developing land-based producer State to changes in copper, nickel, cobalt and manganese situations.

(b) The Authority should use quantifiable yardsticks related to the above criteria, the yardsticks being measurable by relevant and available statistics.

(c) With regard to the criteria of export earnings or economies the Authority should use several quantifiable yardsticks: (i) absolute value of exports of the four metals, (ii) value of export earnings from the four metals in relation to total export earnings, (iii) absolute amount of production of the four metals, (iv) value of production of the four metals in relation to total GDP or total GNP, (v) value of export earnings from the four metals in relation to GDP or GNP, (vi) some combination of the above quantifiable yardsticks related to export earnings and those related to economies.

(d) The Authority should use the idea of dependency thresholds of a given yardstick for the purpose of determining the importance to a developing land-based producer State of, or its dependence on, copper, nickel, cobalt and manganese for its export earnings or for its economy. With regard to the dependency thresholds, the Authority should be guided by the following:

[The issue of dependency thresholds is still under consideration in the Ad Hoc Working Group of Special Commission 1.]

(e) If the dependency thresholds are exceeded, then the Authority shall determine whether the effects that are considered to result potentially from sea-bed production, in the case of applicants referred to in provisional conclusion 3 above, and the effects mentioned in the applications, in the case of applicants referred to in provisional conclusion 4 above, exceeds any of the levels specified below (referred to as the trigger thresholds):

[The issue of trigger thresholds is still under consideration in the Ad Hoc Working Group of Special Commission 1.]

(f) The Authority should consider lowering the figures with respect to dependency thresholds and trigger thresholds taking into account certain factors: production capabilities of a particular developing land-based producer State for one or more of the four metals; projected future production; reserves; GNP and per capita income; population; size of area of a particular developing land-based producer State, and geographical location of a particular developing land-based producer State. With regard to the lowering of the figures the Authority should be guided by the following:

[The issue of lowering the dependency thresholds and trigger thresholds in the case of certain developing land-based producer States is still under consideration in the Ad Hoc Working Group of Special Commission 1.]

Provisional conclusion 6

In-depth investigation

Referring to provisional conclusions 3 (d) and 4 (c) above, the Economic Planning Commission should carry out an in-depth investigation, in accordance with the provisions of the chapeau, on specific countries and specific metals, following the outline as below:

(a) Identification of resources of the Area exploited, and the metals extracted from these resources, referred to in provisional conclusion 1 above;

(b) Forecast or estimation of volume of production of each metal from the Area, as the case may be, in co-operation with pioneer investors and other contractors, referred to, in part, in provisional conclusion 2 above;

(c) Assessment of the relationship between production from the Area and land-based production, along the lines suggested in provisional conclusion 7 below;

(d) Formulation of methodology to establish to what extent effects on price or volume of exports of a metal of a developing land-based producer State can potentially result from or are caused by production of the metal from the Area, as the case may be, pursuant to provisional conclusion 8 below;

(e) Quantification of effects on export earnings, referred to in provisional conclusion 8 below;

(f) Quantification of effects on economies, taking into account the direct effects, side effects and multiplier effects, referred to in provisional conclusion 8 below, priority being accorded to direct effects;

(g) Investigation of problems directly linked with the effects, including assessment of capabilities of the affected State to counter or control the effects, along the lines suggested in provisional conclusion 9 below.

Provisional conclusion 7

Assessment of relationship between production from the Area and existing land-based production

In assessing the relationship between production from the Area and existing land-based production, on a country-by-country and metal-by-metal basis

(a) The Authority should study the supply-demand situation for a particular metal in an individual developing land-based producer State, within the context of the world supply-demand situation. In studying the supply-demand situation in the developing land-based producer State concerned, the Authority should take into account transactions in both the so-called "open market" and "controlled market" as far as possible. The extent to which the developing land-based producer State concerned carries out trade in the "open market" and the "controlled market" should be determined by the Authority; if the extent of trade in the "controlled market" is important, the Authority should take into consideration the terms and conditions of specific trade agreements that the developing land-based producer State has with other States in so far as pertinent data and information are available to the Authority, in co-operation with relevant organizations and the developing land-based producer State;

(b) The Authority should conduct the assessment on a short-term (less than five years), a medium-term (5 to 10 years) and a long-term basis.

Provisional conclusion 8

Potential or actual effects of sea-bed production

(a) With regard to the potential or actual effects of sea-bed production, as the case may be, the Authority should study the effects of sea-bed production in the Area on export earnings or economies of developing land-based producer States.

(b) In studying the above effects, the Authority should bear in mind that the effects have to result from a reduction in the price of an affected metal or in the volume of exports of that metal, to the extent that such reduction is caused by activities in the Area.

(c) In isolating the effects of sea-bed production from those of other factors that may affect the developing land-based producer State concerned:

(i) The Authority should establish, in accordance with the provisions of the *chapeau*, a mechanism for continuous studies of the economics of the metals concerned and for collecting the relevant data and information thereon;

(ii) The Authority should devise a methodology to determine the effects of sea-bed production on the price and volume of exports of the affected metals and to separate them from the effects caused by other factors. In devising such a methodology, the Authority shall take into account: world metal market situation; change in consumption patterns; production from maritime zones under national jurisdiction; substitution; recycling; technological developments; other relevant factors, such as the general economic conditions, the government policies and the exhaustion of deposits within national jurisdiction of the developing land-based producer States concerned;

(iii) In isolating the effects of sea-bed production from other factors, the Authority should also study, to the extent possible, bilateral trade agreements, including barter trade, in relation to the four metals and examine whether a comparison of bilateral trade agreements, before and after sea-bed production occurs, is useful for this purpose.

(d) The Authority should quantify the effects of sea-bed production on export earnings or economies of a developing land-based producer State.

(e) In quantifying the effects of sea-bed production on the economies of the developing land-based producer State concerned, the Authority should take into consideration various factors such as:

(i) Unemployment to the extent that it is caused by or related to reduced production of the four metals;

(ii) Lack of development as a result of reduced government revenues from the four metals;

(iii) Side effects such as reduced production of accessory minerals as a result of the reduction in the production of the four metals;

(iv) Multiplier effects on the economy as a whole.

(f) The Authority should carry out the measurement of actual effects only after sea-bed production occurs.

Provisional conclusion 9

Determination of problems linked with effects of sea-bed production

The problems of developing land-based producer States would arise, to a great extent, from the limitations of the capabilities of such States to counter or control the effects of sea-bed production on their export earnings or economies; in this context:

(a) The Authority should study in what way the adverse effects of sea-bed production would cause more problems to certain developing land-based producer States as compared to other land-based producers;

(b) The Authority should study the extent of the limitations of developing land-based producer States, bearing in mind that these limitations may vary from State to State, depending on various factors specified in provisional conclusion 5 (f) above.

Section 3. DETERMINATION OF MEASURES TO ASSIST DEVELOPING LAND-BASED PRODUCER STATES

Provisional conclusion 10 1/

Assistance to developing land-based producer States likely to suffer adverse effects from sea-bed production

If the in-depth investigations mentioned in provisional conclusion 3 (d) above warrant it, the Economic Planning Commission shall make appropriate recommendations to the Council, in accordance with article 164 (2) (c) of the Convention, with regard to necessary and appropriate measures to provide protection from the adverse effects of sea-bed production to developing land-based producer States likely to suffer adverse effects from sea-bed production, priority being accorded to developing land-based producer States likely to be most seriously affected, with a view to minimizing their difficulties and helping them to make the necessary economic adjustment. The Council shall take, upon the recommendation of the Economic Planning Commission, necessary and appropriate measures in accordance with article 162 (2) (m) of the Convention.

Provisional conclusion 11 1/

Assistance to developing land-based producer States which suffer serious adverse effects from sea-bed production

(a) The Assembly of the Authority shall establish, in accordance with articles 151 (10) and 160 (2) (e) of the Convention, a system of compensation or take other measures of economic adjustment assistance including co-operation with specialized agencies and other international organizations to assist developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected metal or in the volume of exports of that metal, to the extent that such reduction is caused by activities in the Area.

(b) For the above purpose, the Council of the Authority shall make recommendations to the Assembly for a system of compensation or other measures of economic adjustment assistance, in accordance with article 162 (2) (n) of the Convention.

(c) For the purpose of (b) above, the Economic Planning Commission of the Authority shall propose to the Council a system of compensation or other measures of economic adjustment assistance, in accordance with article 164 (2) (d) of the Convention.

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Provisional conclusion 12 1/

Existing economic measures

For the purpose of implementing provisional conclusions 10 and 11 above, with regard to existing economic measures:

(a) The Authority, in accordance with article 151 (10) of the Convention, should co-operate with the United Nations, specialized agencies and other international organizations, as well as with other global, interregional, regional and subregional organizations, and provide assistance to developing land-based producer States in question, under its auspices, and not outside its ambit;

(b) The Authority should assess all of the existing measures, programmes and activities of the United Nations, specialized agencies and other international organizations as well as other organizations at the global, interregional, regional and subregional levels in order to determine how to put them in use for the implementation of provisional conclusions 10 and 11 above;

(c) The Authority should learn from the experiences of the relevant organizations with regard to economic measures that could be of relevance for its purpose;

(d) The Authority should make appropriate co-operative arrangements with the relevant organizations for the purpose of formulating practical modalities to implement provisional conclusions 10 and 11 above;

(e) The Authority should encourage developing land-based producer States to make use of available assistance measures currently being implemented by the United Nations, specialized agencies and other international organizations as well as other global, interregional, regional and subregional organizations, both intergovernmental and non-governmental, for their purposes. (For a list of the relevant organizations and their measures/programmes/activities, see annex II.)

Provisional conclusion 13 1/

Bilateral measures

For the purpose of implementing provisional conclusions 10 and 11 above, with regard to bilateral measures:

(a) The Authority could consider concluding, in accordance with its general principles, and on the basis of a model agreement approved by the Council, bilateral agreements between a developing traditional exporter of the affected metal and a State producing a similar metal from the resources of the Area which traditionally used to import that metal from the country in question;

(b) If such bilateral agreements are concluded, during a 10-year preferential period established from a date determined by the parties to the agreements, the measures envisaged in the agreements shall be implemented to compensate for the unfavourable effects on the export earnings of the developing country in question. Another preferential period (period of the validity of the agreement) may be established by agreement between the parties to the agreement;

(c) If such bilateral agreements are concluded, the measures to be agreed by the parties to compensate for the unfavourable effects on the developing countries' export earnings shall specify that the developed traditional importers concerned are to maintain a fixed average annual level for their purchases during the preferential period mentioned in (b) above. During the first five years, this level will not be lower than the average annual level for the five base years and then the fixed level of purchases will be gradually reduced. In this connection, the excess of purchases over the level for the base period which occurred between the base and the preferential periods shall be taken into account. The average annual level for the five base years, inter alia, shall be negotiated by the parties concerned.

Provisional conclusion 14 1/

Authority's own measures

For the purpose of implementing provisional conclusions 10 and 11 above, with regard to its own measures,

(a) The Authority could consider formulating a measure of its own by creating a compensation fund as envisaged in article 171 (f) of the Convention and paragraph 5 (i) of resolution I;

(b) If such a compensation fund is created, it could be financed from the following sources:

(i) A percentage of the revenues from the profits of the Enterprise to be allocated to the resources of the compensation fund on a regular basis under the provisions contained in article 173 (2) (c) of the Convention;

(ii) A percentage of revenues from the profits of other operators in the Area;

(iii) Voluntary contributions made by Members or other entities;

(c) If such a compensation fund is created, subject to criteria to be drawn up by the Authority, use of the funds would be directed to projects and/or programmes in affected developing land-based producer States with the potential to bring about economic adjustment and capability to counter adverse effects of activities in the Area. Such projects and/or programmes would be directed at areas that include:

(i) Provision of technical assistance;

(ii) Diversification of economies;

/...

best copy available

(iii) Establishment of national and/or regional processing plants;

(iv) Provision of soft loans and/or grants.

Provisional conclusion 15

After the in-depth investigations mentioned in provisional conclusion 4 (c) above are concluded, the Economic Planning Commission shall make the recommendations to the Council that are necessary for the application of the requisite measures in specific cases, in accordance with article 164 (2) (d) of the Convention.

Provisional conclusion 16 1/

Recognizing that the subsidized exploitation of the resources of the Area is a factor likely to exacerbate the adverse effects on developing land-based producer States, and that the economic viability of the deep sea-bed mining régime would be seriously threatened by subsidized mining operations within the Area:

(a) The Authority should take all steps which may be necessary to ensure that the development of the resources of the Area is carried out, inter alia, in an orderly and economically rational manner as provided in articles 150, 151 and A3/13 (1) (f) of the Convention, and that there is adequate surveillance of States Parties' compliance with their obligations under those provisions;

(b) Without prejudice to other specific provisions of the Mining Code, the Authority should develop rules, regulations and procedures to ensure that the exploitation of the resources of the Area is carried out on an economically viable basis and in accordance with sound commercial principles.

Provisional conclusion 17

If a commodity focus were to be adopted, for the purpose of implementing provisional conclusions 10 and 11 above, the Authority should encourage the conclusion of commodity agreements based on international co-operation among producers and consumers.

Notes

1/ The issues of system of compensation/compensation fund, the Authority's own measures, effects of subsidized sea-bed mining and dependency thresholds and trigger thresholds are still under consideration in the Ad Hoc Working Group of Special Commission 1.

Annex I

BACKGROUND REQUIREMENTS: NECESSARY DATA AND INFORMATION

The Authority would need data and information to implement the above provisional conclusions, as outlined below.

Provisional conclusion 1

Development and maintenance of data bases

(a) The Authority should develop and maintain cost-effective data bases with respect to the requisite data and information. For the purpose of developing and maintaining such data bases, wherever possible the Authority should extract data and information from the public domain and from States through voluntary submissions by themselves or submissions by them on request. For this purpose, the Authority should co-operate with, and obtain support from, the relevant organisations.

(b) The Authority should assess the requisite categories, degree of detail in each category and accuracy and reliability of data and information at various time periods and collect data and information accordingly.

Provisional conclusion 2

Subject areas for data and information

For the purpose of discharging its responsibilities in the most efficient manner, the Authority should collect and maintain data and information in the following four subject areas: (a) sea-bed minerals; (b) metals and non-metallic elements contained in sea-bed minerals; (c) developing land-based producer States of metals contained in sea-bed minerals; and (d) existing economic measures of various organizations which could be of assistance to developing land-based producer States.

Provisional conclusion 3

Sea-bed minerals

With respect to the subject area of sea-bed minerals, referred to in provisional conclusion 2 above:

(a) The Authority should collect and maintain data and information on the trends and developments with regard to the economic exploitability of polymetallic nodules. It should also keep in view the trends and developments with regard to polymetallic sulfides, cobalt-rich crusts and any other sea-bed minerals whose occurrence is known;

(b) The Authority should collect and maintain information and data on the following categories: (i) known occurrence in the various locations of the sea-bed categorized by latitudes and longitudes; (ii) estimates of abundance and metal content in each location, if available in the public domain; (iii) characteristics of micro-topography in each location, if available in the public domain; (iv) sediment characteristics in each location, if available in the public domain; (v) water depths in each location, if available in the public domain; (vi) estimates of reserves, potential reserves or resources in various areas of the sea-bed. Such information and data should also cover sea-bed minerals in maritime zones under national jurisdiction.

Provisional conclusion 4

Metals contained in polymetallic nodules

With regard to metals contained in polymetallic nodules, especially copper, nickel, cobalt and manganese:

(a) The Authority should collect and maintain data and information on the following categories, *inter alia*: (i) production, by country and world total; (ii) consumption or apparent consumption, by country and world total; (iii) exports, and re-exports, by products of various stages of processing, by country and world total; (iv) imports, by products of various stages of processing, by country and world total; (v) prices, by type of commodity in various terminal markets; (vi) production capacity, by country and world total; (vii) planned capacity expansion, by country and world total; (viii) planned new mine development by country and world total; (ix) stocks (producers' stocks, consumers' stocks, dealers' stocks), by country and world total; (x) reserves, by country and world total; (xi) resources, by country and world total (wherever applicable, data and information should be on an annual basis starting from 1980). The Authority should also collect and maintain data and information on costs of production from various deposits;

(b) The Authority should collect and maintain information and data on: (i) secondary production and recycling, including the trends and developments in the recent past and the current period as well as the possibilities in the medium-term future; (ii) substitution, including the trends and developments in the recent past and current period as well as the possibilities in the medium-term future;

(c) The Authority should also collect and maintain data and information on: (i) the extent of bilateral trade including quantities and values of traded commodities among various trading partners; (ii) the extent of barter trade including the specification of commodities exchanged in barter, and of the barter trade partners; (iii) bilateral trade agreements and their salient features; (iv) commodity agreements or agreements of a similar nature and their salient features; (v) commodity associations, study groups, etc., and their salient features.

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Provisional conclusion 5

Developing land-based producer States

With regard to the developing land-based producer States of metals contained in polymetallic nodules:

(a) The Authority should collect and maintain information on the following categories, *inter alia*: (i) their production of the four metals concerned; (ii) their consumption of the four metals concerned; (iii) their exports of the four metals concerned; (iv) their imports of the four metals concerned; (v) the prices they receive for their exports; (vi) their gross domestic product (GDP) and/or gross national product (GNP); (vii) their total exports of all goods and services; (viii) rate of growth of their GDP or GNP; (ix) their total employment in the economy; (x) their employment in the four metals industries concerned; (xi) their government revenues from the four metals concerned; (xii) the extent of their reserves of the four metals concerned; (xiii) the extent of their resources of the four metals concerned; (xiv) the estimated costs of production from their deposits; (xv) their trade agreements with trading partners and the salient features of these agreements; (xvi) the direction of their trade in the four metals concerned;

(b) To the extent applicable, the Authority should utilize data under provisional conclusion 4 above for the purpose of this provisional conclusion.

Provisional conclusion 6

Making data and information available to States

The Authority should make available data and information to the States in appropriate forms, as requested.

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Annex II

LIST OF RELEVANT ORGANIZATIONS AND THEIR MEASURES/PROGRAMMES/ACTIVITIES

[to be inserted after the consideration of documents LOS/PCN/SCN.1/CRP.10 and Add.1]

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Appendix

ARRANGEMENT OF PROVISIONAL CONCLUSIONS IN CRP.16 AND CRP.16/Rev.1

Number in CRP.16	Number in CRP.16/Rev.1
1	1 (a)
2	1 (b)
3	2
4	7 (a) (in part)
5	7 (b)
6	7 (a) (in part)
7	7 (a) (in part)
8	7 (a) (in part)
9	8 (a)
10	8 (b)
11	6, chapeau (in part)
12	8 (c)(i)
13	8 (c)(ii) (in part)
14	8 (c)(ii) (in part)
15	8 (c)(iii)
16	8 (d)
17	8 (e)
18	8 (f)
19	6
20	3 (b) (in part)
21	5 (a)
22	5 (b) (in part)
23	5 (b) (in part)
24	5 (c)
25	5 (b) (in part)
26	Deleted
27	5 (d) (in part)
28	5 (d) (in part)
29	5 (f) (in part)
30	3 (b) (in part)
31	3 (b) (in part)
32	9, chapeau and 9 (b)
33	9 (a)
34	11 (in part)
35	17
36	11 (a)
37	11 (b)
38	11 (c)
39	12 (a)
40	12 (b)
41	12 (c)
42	12 (d)
43	12 (e)

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Number in CRP.16	Number in CRP.16/Rev.1
44	14 (a)
45	14 (b)
46	14 (c)
47	13 (a)
48	13 (b)
49	13 (c)
50	16
51	4 (a)
52	4 (b) (in part),5 (d) (in part) and 5 (e) (in part)
53	4 (in part) and 15
54	3 (a)
55	3 (d) (in part) and 10 (in part)
56	3 (in part) and 10 (in part)
57	10 (in part)
58	Annex I, 2
59	Annex I, 3 (a)
60	Annex I, 3 (b)
61	Annex I, 4 (a)
62	Annex I, 4 (b)
63	Annex I, 4 (c)
64	Annex I, 5 (a)
65	Annex I, 1 (a)
66	Annex I, 6

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LOS/PCN/SCN.1/1989/CRP.17
16 March 1989

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
Kingston, 27 February-23 March 1989

SUGGESTIONS BY THE DELEGATION OF PAKISTAN ON REMEDIAL MEASURES TO ALLEVIATE PROBLEMS THAT AFFECT DEVELOPING LAND-BASED PRODUCERS FOR CONSIDERATION BY SPECIAL COMMISSION 1

1. Out of the many important issues facing the Commission 1, I would like to address the following three issues with a possible attempt to make some recommendations:

(a) Criteria for identification of the developing land-based producer states.

(b) Criteria to determine adverse effects of Sea-Bed mining on developing land-based producer states,

(c) A system of compensation.

CRITERIA FOR THE IDENTIFICATION OF LAND-BASED PRODUCERS:

2. I would like to propose a simple definition for the identification of a developing land-based producer state as follows:

> "Any State engaged in land mining of any one or all of the four metals, when the production exceeds home consumption and the State either exports the balance in open market or as a barter, irrespective of the volume or value of such export and barter, is to be identified as a land-based producer. In addition, when the sea-bed mining starts, the reserve stocks of such State should be estimated to be for a period of 2-3 years. Export of re-processed metal or import of ore and export of finished metal shall not qualify a State as a developing land-based producer States."

The above definition is open to refinement. Based on the above criteria, the SC.1 may prepare a list of the developing land-based producer States with a view to identifying them to the Authority. Alternatively, the Commission may ask the State who consider themselves qualified under the above criteria to apply for registration as developing-land-based producer States.

CRITERIA TO DETERMINE ADVERSE EFFECTS ON DEVELOPING LAND-BASED PRODUCER STATES OF SEA-BED MINING

3. The process of assessment of the adverse effects and subsequent quantum and type of remedial measures needed is to be initiated with the filing of an application on a prescribed form by the affected State. For the ease of processing, within the Authority, a separate application will be filed for each metal. To enable the experts of the Authority to carry out a detailed, indepth and meaningful study, data for the past five years is to be provided by the States filing the application. The application form will contain the following information to enable the Authority to categorise the adverse effects.

(a) Figures for the past five years for:
 (1) Production - Quantity
 (2) Home consumption-Quantity
 (3) Export - Volume and value
 (4) Reserves-Estimated quantity.

(b) National income for the past five years with percentage contribution of the concerned metal to the national income.

(c) Rate of economic growth for the last five years with percentage contribution of the concerned metal to the rate of the economic growth.

(d) Rate of unemployment for the past five years with percentage indication in the concerned mining industry.

(e) Closure of any mine site due to a major strike or any other reason affecting the production.

(f) Information on sea-bed mining, if undertaken by the State within national jurisdiction with production figures.

(g) International market survey for the metal concerned for the last five years.

(h) Bases for the claim. Based on the data, the State shall highlight the grounds on which the claim is based, and that the adverse effect on the developing land-based producer States has been brought about by the sea-bed mining. The developing land-based producer States will also make effort to justify that

/...

changes in the market position are not attributed to substitution, recycling or any other reason. In the final paragraph the State should also indicate the remedy being sought.

4. The Authority will also maintain data, as mentioned in para 3(a) to (f) from independent sources for all DLBPS registered with the Authority and for para. 3(g) for the four metals. While watching the market situation, special care is to be given to monitor the changes in demand and price due to reasons other than sea-bed mining. Data so compiled will be used to check the claim filed by the State. In addition the Authority will also collect the following information:

(a) General economic condition of all States registered as DLBPS on a continuing basis.

(b) All information on new developed land-based mines and new plants brought on line affecting the supply and demand in world metal market, especially noting changes in the market due to sea-bed mining.

(c) Complete information on sea-bed mining by all States/ Investors and the Enterprise, with total production and marketing (volume and value) figures.

(d) Complete information on sea-bed mining within national jurisdiction of all States.

(e) Substitution. Substitues available for each metal and their price comparison. Substitution has varying effect on the four metals, nickel being the least affected. How much challenge is there to each metal is difficult to quantify at this stage, but when the information is required it will be available. There is however a close relationship between the price and substitution. Higher prices will force more and more substitution. As far as the work of SC.1 is concerned, without going into too much details, we should only bring the varying degree of effect of substitution on the four metals to the Authority and stress that substitution is an important consideration while studying the effects of Sea-bed mining on metal market.

(f) Recycling. Effects of recycling is much more difficult to quantify. Like substitution, it also has varying effect on the four metals. Quantity of recycled metal available in the market is prone to large fluctuation at any particular time. Presently some of the developing countries are not making full use of their scrap and waste, but slowly they are becoming aware. Also the use of metal itself is on the increase, and therefore we may see an increase in the availability of re-cycled metal. Like substitution, we must bring to the notice of the Authority that the influence of recycling on the metal market is an important consideration, which must be taken into account while studying the effects of sea-bed mining on the metal market.

ACTION BY AUTHORITY

5. On receipt of the application from the Developing land-based producer States, the Authority shall appoint a Committee of experts to undertake State-by-State and metal-by-metal in depth study, associating the affected State as necessary, to determine the effects of sea-bed mining on the applicant's State. The Committee shall make recommendation on the following:

(a) Drop in market price. Assess the overall drop in price in world market, and after taking into consideration the effects of substitution, recycling, increase in production from other sources (such as large barter arrangements changing into normal export), drop in demand etc, determine the proportion of drop attributed to the sea-bed mining. To be expressed in per unit price.

(b) Drop in export. How much of drop in export of the applicant state can be attributed to sea-bed mining. To be expressed as percentage.

(c) Effect of drop in export and market price. Work out the effect of drop in export and market price on the economy of the state.

(d) Dependency Level. The committee will establish the dependency level of the States economy on the metal. Basing the levels on minimum export and earning will not be right. Economies of some small producers may be heavily dependent on the metal. Dependency level should be determined on the basis of the total effect the metal has on the economy of the State and may be expressed as low, medium, and high or dependent, highly dependent and severely dependent.

Above 15%	High/Severely dependent
10 - 15%	Medium/Highly dependent
Up to 10%	Low/Dependent.

(e) Categorization of Claim. As per the Convention, all Applicant State/States are to be categorized as seriously affected or most seriously affected. I find some practical difficulty with only two categories. Categorization into four levels will be more practical. Therefore while retaining the two agreed categories, I am proposing to split them further as under. The percentages indicate the effect on the economy, calculated after taking into consideration the commulative effect of all the factors:

(1) Seriously Affected
Category B up to 5%
Category A from 5-10%

(2) Most Seriously Affected
Category B from 10-15%
Category A above 15%

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(f) Remedial Measures. Any system adopted should not place any burden on the resources of the Authority. For providing financial assistance, a Compensation Fund is to be established. Contribution to this fund should be limited to only those States/entities including the Enterprise, who would derive benefits from sea-bed mining. All kind of payments made by States/entities in connection with the sea-bed mining, such as obligation money, by the Registered Pioneer Investors yearly etc. should be deposited in this fund. It is not possible to lay down any rate of contribution at this stage, it will have to be a negotiated arrangement between the Authority and the Registered Pioneer Investors and other entities concerned. Similarly, a formula to determine the rate of compensation cannot be worked out at this stage. It will depend on the state of compensation fund. The quantum and type of compensation may have to be negotiated with the State concerned. The compensation will have to be proportionate to the losses and will be limited to the extent of funds available. Perhaps it will not be possible to compensate the entire loss of earning.

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LOS/PCN/SCN.1/1989/CRP.18
17 March 1989

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
Kingston, 27 February-23 March 1989

CRITERIA FOR THE IDENTIFICATION OF LAND-BASED PRODUCER STATES ACTUALLY OR LIKELY TO BE AFFECTED BY SEA-BED PRODUCTION

(SUGGESTIONS BY THE CHAIRMAN OF THE AD HOC WORKING GROUP OF SPECIAL COMMISSION 1)

1. The characterization of adverse effects of sea-bed production on the export earnings or economies of developing land-based producer States involves a combination of two aspects. The first aspect is that one or more of the four minerals concerned - copper, nickel, cobalt and manganese - have an important or significant role in the total export earnings or economies of the individual developing land-based producer States, that is, the individual developing land-based producer States have to be dependent to a certain degree on these minerals. The second aspect is that there has to be a decrease of a somewhat substantial extent in the export earnings of individual developing land-based producer States from the exports of these minerals, or an unfavourable change of a somewhat substantial extent in the economies of individual developing land-based producer States.

> For example, if a developing land-based producer State is somewhat dependent on the minerals concerned and it experiences an unfavourable change in its export earnings from these minerals or in its economy after sea-bed production occurs, it can be considered affected by sea-bed production.

2. These two aspects of the dependency of a developing land-based producer State on the export earnings of the four minerals concerned, and a somewhat substantial fall in export earnings have been discussed in Special Commission 1. The Chairman of Special Commission 1 has put forward certain suggestions in CRP.8 and CRP.14 respectively. The delegation of Pakistan has also put forward certain suggestions during this session.

3. There have also been attempts to characterize the dependency aspect in a quantifiable manner with the use of some figures. These are called dependency levels. Again, there have been attempts to characterize the aspect of somewhat substantial unfavourable change after sea-bed production occurs in a quantifiable manner with the use of some figures. These are called trigger levels, because they form the basis of triggering some action by the organization concerned.

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4. These two concepts of dependency levels and trigger levels are not new. In the SYSMIN of EEC-ACP countries, in article 179, paragraph 3 of the Third Lome Convention, a substantial fall is characterized by a fall of 10% (refer to document SCN.1/WP.5). Again, in the STABEX of EEC-ACP countries, although STABEX is concerned with agricultural commodities, a substantial fall is characterized by a fall of 6% (refer to document SCN.1/WP.12). Again, with respect to dependency level, SYSMIN uses a figure of 15% in article 180 of the Third Lome Convention; STABEX uses a figure of 6% for dependency level. There are further examples of trigger levels and dependency levels in the proposed compensatory financing system of UNCTAD (refer to document SCN.1/WP.5).

5. After a careful consideration of our discussion and a thorough study of the existing and proposed systems, I would like to put forward certain suggestions about the dependency levels and the trigger levels, synthesizing the various proposals.

6. For dependency levels, I would first like to distinguish among 3 categories of developing land-based producer States: (i) dependent, (ii) highly dependent, and (iii) very highly dependent. I would then characterize dependency levels in two ways: one is to see what percentage of total export earnings of a particular developing land-based producer State is contributed by one or more of the four minerals; the other is to see what the value of export earnings of a particular developing land-based producer State from one or more of the four minerals is. I would then suggest the following dependency levels in terms of percentages, for these 3 categories of developing land-based producer States:

(i) Those developing land-based producer States which earn between 5% and 10% of their total export earnings per year from the exports of one or more of the four minerals, before sea-bed production occurs, will be categorized as "dependent".

(ii) Those developing land-based producer States which earn between 10% and 15% of their total export earnings per year from the exports of one or more of the four minerals, before sea-bed production occurs, will be categorized as "highly dependent".

(iii) Those developing land-based producer States which earn more than 15% of their total export earnings per year from the exports of one or more of the four minerals, before sea-bed production occurs, will be categorized as "very highly dependent".

Again, I would suggest the following dependency levels in terms of value of exports, for these 3 categories of developing land-based producer States:

/...

(i) Those developing land-based producer States which earn between 100 and 200 million U.S. dollars of export earnings per ;year from the exports of one or more of the four minerals, before sea-bed production occurs, will be categorized as "dependent".

(ii) Those developing land-based producer States which earn between 200 and 400 million U.S. dollars of export earnings from the exports of one or more of the four minerals, before sea-bed production occurs, will be categorized as "highly dependent:.

(iii) Those developing land-based producer States which earn more than 400 million U.S. dollars of export earnings from the exports of one or more of the four minerals, before sea-bed production occurs, will be categorized as "very highly dependent".

For trigger level, I would like to suggest that the fall in the export earnings of a particular developing land-based producer State from the exports of one or more of the four minerals concerned, after sea-bed production, has to be at least 5% in comparison with the situation where there is no sea-bed production.

8. I would also like to suggest that for the "least developed" among the developing land-based producer States, identified in the relevant United Nations documents, the trigger level and the dependency levels should be lower. I would suggest that for such States, the above figures for trigger level and dependency levels should be reduced by 50%.

9. After we have decided on the trigger level and the dependency levels, we can then combine these two concepts, and categorize developing land-based producer States in three groups: (i) affected, (ii) seriously affected, and (iii) most seriously affected.

For example, if a developing land-based producer State before sea-bed production occurs, earns more than 15% of its total exort earnings, or more than 400 million U.S. dollars of export earnings per year, from one or more of the four minerals, and then experiences a fall of 5% or more in the export earnings from the exports of these minerals after sea-bed mining occurs,it will be categorized as "most seriously affected".

10. We can also use the combination of the two concepts of dependency level and trigger level to categorize, at the time of the issuance of the first production authorizations, developing land-based producer States in three groups: (i) likely to be affected, (ii) likely to be seriously affected, and (iii) likely to be most seriously affected.

For example, if a developing land-based producer State, at the time of the issuance of the first production authorizations, earns more than 15% of its total export earnings per year, from one or more of the four minerals, and has the potential, objectively investigated, of experiencing a fall of 5% or more in the export earnings from the exports of these minerals after commerical production from the Area occurs, will be categorized as "likely to be most seriously affected."

/...

11. I should point out that, as we have agreed in the Special Commission, a developing land-based producer State which considers itself affected or likely to be affected may apply to the Authority. The Authority will examine the application and undertake studies to determine the over-all impact of the effects on the export earnings and the economy of the developing land-based producer State in question, to determine to what extent the effects have been/would be caused by sea-bed production, and to determine what remedial measure needs to be taken if any. The Chairman of the Special Commission has put forward certain suggestions in this regard.

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LOS/PCN/SCN.1/1989/CRP.18/Add.1
30 August 1989

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY AND
FOR THE INTERNATIONAL TRIBUNAL FOR
THE LAW OF THE SEA
Special Commission 1
New York, 14 August-1 September 1989

CRITERIA FOR THE IDENTIFICATION OF LAND-BASED PRODUCER STATES ACTUALLY OR LIKELY TO BE AFFECTED BY SEA-BED PRODUCTION (SUGGESTIONS BY THE CHAIRMAN OF THE *AD HOC* WORKING GROUP OF SPECIAL COMMISSION 1)

(*Addendum*)

1. The following paragraph should be added on page 3 immediately after subparagraph (iii):

> In calculating the percentage of total export earnings of a particular developing land-based producer State from the exports of one or more of the four minerals, or the value of export earnings of a particular developing land-based producer State from one or more of the four minerals, before sea-bed production occurs, an average over a 3-year period before the year of sea-bed production will be used.

2. Also on page 3, the following sentence should be added at the end of paragraph 9:

> I would like to suggest that in such categorization priority be given to the developing land-based producer States of certain minerals, e.g. cobalt.

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LOS/PCN/SCN.1/1990/CRP.18/Rev.1
1 August 1990

ORIGINAL: ENGLISH

**PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
New York, 13-31 August 1990**

CRITERIA FOR THE IDENTIFICATION OF LAND-BASED PRODUCER STATES ACTUALLY OR LIKELY TO BE AFFECTED BY SEA-BED PRODUCTION (REVISED SUGGESTIONS BY THE CHAIRMAN OF THE _AD HOC_ WORKING GROUP OF SPECIAL COMMISSION 1)

1. The Chairman of the _Ad Hoc_ Working Group of Special Commission 1 had put forward in documents LOS/PCN/SCN.1/1989/CRP.18 and Add.1, certain suggestions with regard to the criteria for the identification of developing land-based producer States actually or likely to be affected by sea-bed production. Those suggestions were discussed extensively in the Working Group during the 1989 summer meeting and the eighth session of the Preparatory Commission. It appears to the Chairman of the Working Group that certain revisions need to be incorporated to facilitate agreement among delegations regarding the suggestions. The following revisions are being put forward for this purpose.

Dependency thresholds

2. With regard to the dependency thresholds, the Authority should be guided by the following:

(a) Those developing land-based producer States which earn between 10 per cent and 15 per cent of their total export earnings per year from the export of one or more of the four minerals - copper, nickel, cobalt and manganese - before sea-bed production occurs, shall be categorized as "dependent";

(b) Those developing land-based producer States which earn more than 15 per cent of their total export earnings per year from the export of one or more of the four minerals concerned, before sea-bed production occurs, shall be categorized as "highly dependent";

/...

(c) In the cases of certain developing land-based producer States which earn a large amount of export earnings per year from the export of one or more of the four minerals concerned, before sea-bed production occurs, although those export earnings may not account for the specified percentages of their total export earnings, as above, the Authority shall determine an appropriate category on a case-by-case basis;

(d) In calculating the percentage of total export earnings of a particular developing land-based producer State from the export of one or more of the four minerals concerned, or the value of export earnings of a particular developing land-based producer State from one or more of the four minerals concerned, before sea-bed production occurs, an average shall be used over a three-year period before the year of the earliest commercial production from the Area, in the cases of developing land-based producer States which apply after the commencement of commercial production from the Area, and an average shall be used over a three-year period before the year of issuance of the first production authorization(s), in the cases of developing land-based producer States which apply before the commencement of commercial production.

Trigger thresholds

3. As to the trigger thresholds,

(a) The fall in the export earnings of a particular developing land-based producer State from the export of one or more of the four minerals concerned, after sea-bed production occurs, has to be at least 10 per cent in comparison with the situation where there is no sea-bed production;

(b) In the cases of developing land-based producer States which apply before the commencement of commercial production, the estimated fall in the export earnings of a particular developing land-based producer State from the export of one or more of the four minerals concerned, after sea-bed production occurs, has to be at least 10 per cent in comparison with the situation where there is no sea-bed production; such estimate shall be made on the basis of the forecasts referred to in provisional conclusion 2 (see LOS/PCN/SCN.1/1990/CRP.16/Rev.1).

Least developed countries

4. In the cases of the "least developed" among the developing land-based producer States, identified in the relevant United Nations documents, the dependency thresholds and the trigger thresholds shall be reduced by 33 per cent.

Priority to producers of certain minerals

5. In the application of the above criteria, priority shall be given to the developing land-based producer States of certain minerals, e.g., cobalt.

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LOS/PCN/SCN.1/1991/CRP.18/Rev.2
26 February 1991

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
Kingston, 25 February - 22 March 1991

CRITERIA FOR THE IDENTIFICATION OF LAND-BASED PRODUCER STATES ACTUALLY OR LIKELY TO BE AFFECTED BY SEA-BED PRODUCTION (REVISED SUGGESTIONS BY THE CHAIRMAN OF THE AD HOC WORKING GROUP OF SPECIAL COMMISSION 1)

1. The Chairman of the *Ad Hoc* Working Group of Special Commission 1 had put forward, in documents LOS/PCN/SCN.1/1989/CRP.18 and Add.1, certain suggestions with regard to the criteria for the identification of developing land-based producer States actually or likely to be affected by sea-bed production. Those suggestions were discussed extensively in the Working Group during the 1989 summer meeting and the eighth session of the Preparatory Commission. It [appears][1] appeared[2] to the Chairman of the Working Group that certain revisions [need] needed to be incorporated to facilitate agreement among delegations regarding the suggestions. [The following revisions are being put forward for this purpose.] Such revisions had been put forward by the Chairman in document LOS/PCN/SCN.1/1990/CRP.18/Rev.1. These revised suggestions were discussed in the Working Group during the 1990 summer meeting. As pointed out in the report of the Chairman at the conclusion of that meeting, "the exchange of views on CRP.18/Rev.1 was very fruitful and pointed to certain general trends which could be pursued further with a view to reaching agreement among delegations. The Chairman of the Ad Hoc Working Group intends to do so by issuing a second revision of CRP.18 ..." Such a second revision is put forward in the following.

Dependency Thresholds

2. With regard to the dependency thresholds, the Authority should be guided by the following:

(a) Those developing land-based producer States which earn between 10 per cent and 15 per cent of their total export earnings per year from the export of one or more of the four minerals - copper, nickel, cobalt and manganese - [before sea-bed production occurs,] before and after the commencement of sea-bed production, shall be categorized as "dependent";

/...

(b) Those developing land-based producer States which earn more than 15 per cent of their total export earnings per year from the export of one or more of the four minerals concerned, [before sea-bed production occurs,] before and after the commencement of sea-bed production, shall be categorized as "highly dependent";

(c) In the cases of certain developing land-based producer States which [earn a large amount of export earnings per year from the export of one or more of the four minerals concerned, before sea-bed production occurs, although those export earnings may not account for the specified percentages of their total export earnings, as above, the Authority shall determine an appropriate category] can justify that they encounter special problems before and after the commencement of sea-bed production, although their export earnings from the export of one or more of the four minerals concerned may not account for the specified percentages of their total export earnings, as above, the Authority shall determine whether they can be categorized as "dependent" or "highly dependent", on a case-by-case basis;

(d) In calculating the percentage of total export earnings of a particular developing land-based producer State from the export of one or more of the four minerals concerned, [or the value of export earnings of a particular developing land-based producer State from one or more of the four minerals concerned, before sea-bed production occurs, an average shall be used over a three-year period before the year of the earliest commercial production from the Area, in the cases of developing land-based producer States which apply after the commencement of commercial production from the Area, and an average shall be used over a three-year period before the year of issuance of the first production authorization(s), in the cases of developing land-based producer States which apply before the commencement of commercial production.] an average shall be used over a three-year period before the year of application by that developing land-based producer State.

Trigger Thresholds

3. As to the trigger thresholds,

[(a)] the fall in the export earnings of a particular developing land-based producer State from the export of one or more of the four minerals concerned, [after sea-bed production occurs,] in the situation where there is sea-bed production, has to be at least 10 per cent in comparison with the situation where there is no sea-bed production[;].

[(b) In the cases of developing land-based producer States which apply before the commencement of commercial production, the estimated fall in the export earnings of a particular developing land-based producer State from the export of one or more of the four minerals concerned, after sea-bed production occurs, has to be at least 10 per cent in comparison with the situation where there is no sea-bed production; such estimate shall be made on the basis of the forecasts referred to in provisional conclusion 2 (see LOS/PCN/SCN.1/1990/CRP.16/Rev.1).]

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Least developed countries

4. In the cases of the "least developed" among the developing land-based producer States, identified in the relevant United Nations documents, the dependency thresholds and the trigger thresholds shall be reduced by 33 per cent.

Priority to producers of certain minerals

5. [In the application of the above criteria, priority shall be given to] If, by applying the above criteria, the Economic Planning Commission determines that an in-depth investigation needs to be carried out, it shall undertake such an investigation, pursuant to provisional conclusions 3(d) and 4(c), priority being accorded to the cases of the developing land-based producer States of certain minerals, e.g., cobalt.

Notes

1/ Texts to be deleted are marked by [ ] sign.

2/ New texts to be inserted are marked by underlining.

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LOS/PCN/SCN.1/1992/CRP.18/Rev.3
2 March 1992

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
Kingston, 24 February - 13 March 1992

CRITERIA FOR THE IDENTIFICATION OF DEVELOPING LAND-BASED PRODUCER STATES ACTUALLY OR LIKELY TO BE AFFECTED BY SEA-BED PRODUCTION (REVISED SUGGESTIONS BY THE CHAIRMAN OF THE *AD HOC* WORKING GROUP OF SPECIAL COMMISSION 1)

1. On the basis of the discussions in the *Ad Hoc* Working Group of Special Commission 1, the suggestions and revised suggestions of the Chairman of the Group with regard to the criteria for the identification of developing land-based producer States actually or likely to be affected by seabed production, contained in documents LOS/PCN/SCN.1/1989/CRP.18 and Add.1, LOS/PCN/SCN.1/1990/CRP.18/Rev.1, and LOS/PCN/SCN.1/1991/CRP.18/Rev.2, respectively, further revisions are being put forward below.

Dependency thresholds

[The following paragraph may be inserted at the end of paragraph (d) of provisional conclusion 5 contained in LOS/PCN/SCN.1/1990/CRP.16/Rev.1.]

2. With regard to the dependency thresholds, the Authority should be guided by the following:

(a) During the relevant period when applications by developing land-based producer States are submitted, either before the commencement of commercial production from the Area or after, those developing land-based producer States which earn 10% or more of their total export earnings per year from the export of one or more of the four minerals—copper, nickel, cobalt and manganese—shall be categorized as "dependent";

(b) If the applications are submitted before the commencement of commercial production from the Area, in the cases of certain developing land-based producer States which can demonstrate that they are likely to encounter special problems resulting from seabed production, and if the applications are submitted after the commencement of commercial production from the Area, in the cases of certain developing land-based producer States which can demonstrate that they actually encounter special problems resulting from seabed production, although their export earnings from the export of one or more of the four minerals concerned, may not account for the specified percentage of their total export earnings, as above, the Authority shall determine, on a case-by-case basis, whether they can be categorized as "dependent" or not;

(c) In calculating the percentage of total export earnings of a particular developing land-based producer State from the export of one or more of the four minerals concerned, an average shall be used over a three-year period before the year of application by that developing land-based producer State.

Trigger thresholds

[The following paragraph may be inserted at the end of paragraph (e) of provisional conclusion 5 contained in LOS/PCN/SCN.1/1990/CRP.16/Rev.1.]

3. As to the trigger thresholds,

(a) In the cases of developing land-based producer States whose applications are submitted after the commencement of commercial production from the Area, the actual fall in the export earnings of a particular developing land-based producer State from the export of one or more of the four minerals concerned, in the situation where there is seabed production, has to be at least 10 per cent in comparison with the situation where there is no seabed production;

(b) In the cases of developing land-based producer States whose applications are submitted before the commencement of commercial production from the Area, the estimated fall in the export earnings of a particular developing land-based producer State from the export of one or more of the four minerals concerned, that is likely to result in the situation where there is seabed production, has to be at least 10 per cent in comparison with the situation where there is no seabed production.

Least developed countries

[The following paragraph may be inserted at the end of paragraph (f) of provisional conclusion 5 contained in LOS/PCN/SCN.1/1990/CRP.16/Rev.1.]

4. In the cases of the "least developed" among the developing land-based producer States, identified in the relevant United Nations documents, the dependency thresholds and the trigger thresholds shall be reduced by 33 per cent.

Indicative nature of the figures

[The following paragraph may be inserted as new paragraph (g) at the end of provisional conclusion 5 contained in LOS/PCN/SCN.1/CRP.16/Rev.1.]

5. Any figure specified above is merely indicative; the Authority shall, in due time, determine the definitive figures.

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LOS/PCN/SCN.1/1992/CRP.18/Rev.3/Add.1
9 March 1992

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY AND
FOR THE INTERNATIONAL TRIBUNAL FOR
THE LAW OF THE SEA
Special Commission 1
Tenth session
Kingston, Jamaica
24 February-13 March 1992

SUGGESTED AMENDMENTS TO DOCUMENT LOS/PCN/SCN.1/1992/CRP.18/Rev.3

Proposal by the delegation of Indonesia

1. In paragraph 2(b), after "on a case-by-case basis," insert the following:

> "taking into account particularly the effects of such problems on their economy and social development,"

2. After paragraph 3(b), add the following as paragraph 3(c):

> "If the actual or estimated fall in export earnings of a particular developing land-based producer State from the export of one or more of the four metals concerned is less than 10 per cent but more than 5 per cent in comparison with the situation where there is no seabed production, the Authority shall determine, on a case-by-case basis, taking into account the effects of such fall on its economy and social development, the necessary remedial measure or measures to help that particular developing land-based producer State."

3. Replace paragraph 5 by the following:

> "Without prejudice to its right to determine other figures, taking into account the prevailing condition or situation at a certain time, the Authority shall use the figures indicated above."

4. A few hypothetical examples are given below in order to illustrate the working of the provision contained in paragraph 2 above, referred to as the 'safeguard clause.'

/...

Example 1

Suppose, DLBPS A has export earnings from the export of
one or more of the four metals concerned, amounting to $ 60 million
Suppose, that DLBPS has total export earnings [from all
exported goods and services], amounting to $100 million
Then, DLBPS A's dependency ratio = 60/100 = 60 per cent
Suppose, the fall in the export earnings of that DLBPS
from the export of one or more of the four metals concerned
in the situation where there is seabed production, is 4 per cent.
This is lower than 5 per cent. Thus, the 'safeguard clause'
would not apply in this case.

Example 2

Suppose, DLBPS B has export earnings from the export of
one or more of the four metals concerned, amounting to $25 million
Suppose, that DLBPS has total export earnings [from
all exported goods and services],amounting to $100 million
Then, DLBPS B's dependency ratio = 25/100 = 25 per cent
Suppose, the fall in the export earnings of that DLBPS
from the export of one or more of the four metals concerned,
in the situation where there is seabed production, is 9 per cent.
This is higher than 5 per cent. Thus, the 'safeguard clause' would apply
in this case.

Example 3

Suppose, DLBPS C has export earnings from the export of
one or more of the four metals concerned amounting to $ 8 million
Suppose, that DLBPS has total export earnings [from
all exported goods and services], amounting to $100 million
Then, DLBPS C's dependency ratio = 8/100 = 8 per cent
Suppose, the fall in the export earnings of that DLBPS
from the export of one or more of the four metals concerned,
in the situation where there is seabed production is 6 per cent.
This is higher than 5 per cent. Thus, the 'safeguard clause' would apply
in this case.

5. Irrespective of the degree of dependency of a DLBPS on the export earnings from the export of one or more of the four metals concerned,(2 per cent, 10 per cent, 20 per cent, 60 per cent, say), the 'safeguard clause' would apply as long as the fall in export earnings from those metals in the situation where there is seabed production is more than 5 per cent. On the other hand, if such a fall is less than 5 per cent, the 'safeguard clause' would not apply, however high the dependence of a DLBPS on the export earnings from the export of those metals.

6. It should be noted that the 'safeguard clause' applies only when the provisions contained in paragraphs 3(a) and 3(b) of document LOS/PCN/SCN.1/1992/CRP.18/Rev.3, with regard to the trigger thresholds are not applicable.

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LOS/PCN/SCN.1/1992/CRP.18/Rev.3/Add.2
9 March 1992

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY AND
FOR THE INTERNATIONAL TRIBUNAL FOR
THE LAW OF THE SEA
Special Commission 1
Tenth session
Kingston, Jamaica
24 February-13 March 1992

SUGGESTED AMENDMENT TO DOCUMENT LOS/PCN/SCN.1/CRP.18/Rev.3

Proposal by the delegations of the European Economic Community and its member States

1. After paragraph 3(b), add the following as paragraph 3(c):

> "In the cases of developing land-based producer States where the actual or estimated fall in export earnings from the export of one or more of the four metals concerned is less than 10 per cent but is at least 2 per cent of the total export earnings [from all exported goods and services], in comparison with the situation where there is no seabed production, the Authority shall determine, on a case-by-case basis, whether action would be triggered."

2. A few hypothetical examples are given below in order to illustrate the working of the above provision referred to as the 'safeguard clause'.

Example 1

Suppose, DLBPS A has export earnings from the export of
one or more of the four metals concerned, amounting to $ 60 million
Suppose, that DLBPS has total export earnings [from
all exported goods and services], amounting to $100 million
Then, DLBPS A's dependency ratio = 60/100 = 60 per cent
Suppose, the fall in the export earnings of that DLBPS
from the export of one or more of the four metals concerned
in the situation where there is seabed production is 4 per cent.
Thus, the fall amounts to 4 per cent of $60 million = $2.4 million.
This fall of $2.4 million, as a percentage of total export earnings of
$100 million = 2.4/100 = 2.4 per cent.
This is higher than 2 per cent. Thus, the 'safeguard clause'
would apply in this case.

/...

Example 2

Suppose, DLBPS B has export earnings from the export of one or more of the four metals concerned, amounting to $ 25 million
Suppose, that DLBPS has total export earnings [from all exported goods and services], amounting to $100 million
Then, DLBPS B's dependency ratio = 25/100 = 25 per cent.
Suppose, the fall in the export earnings of that DLBPS from the export of one or more of the four metals concerned, in the situation where there is seabed production, is 9 per cent.
Thus, the fall amounts to 9 per cent of $25 million = $2.25 million.
This fall of $2.25 million, as a percentage of total export earnings of $100 million = 2.25/100 = 2.25 per cent.
This is higher than 2 per cent. Thus, the 'safeguard clause' would apply in this case.

Example 3

Suppose, DLBPS C has export earnings from the export of one or more of the four metals concerned, amounting to $ 18 million
Suppose, that DLBPS has total export earnings [from all exported goods and services], amounting to $100 million
Then, DLBPS C's dependency ratio = 18/100 = 18 per cent.
Suppose, the fall in the export earnings of that DLBPS from the export of one or more of the four metals concerned, in the situation where there is seabed production, is 9 per cent.
Thus, the fall amounts to 9 per cent of $18 million = $1.62 million.
This fall of $1.62 million, as a percentage of total export earnings of $100 million = 1.62/100 = 1.62 per cent.
This is lower than 2 per cent. Thus, the 'safeguard clause' would not apply in this case.

3. The 'safeguard' clause' would not apply for the cases of DLBPS whose export earnings from the export of one or more of the four metals concerned is less than 20 per cent of their total export earnings [from all exported goods and services] and whose fall in export earnings from those metals in the situation where there is seabed production, is less than 10 per cent. On the other hand, the higher the dependency of a DLBPS on the export earnings from the export of one or more of the four metals (more than 20 per cent, say 50 or 60 per cent), the lower would be the required fall in export earnings from these metals, in the situation where there is seabed production, in order for the 'safeguard clause' to be applicable.

4. It should be noted that the 'safeguard clause' applies only when the provisions contained in paragraphs 3(a) and 3(b) of document LOS/PCN/SCN.1/1992/CRP.18/Rev.3, with regard to the trigger thresholds are not applicable.

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LOS/PCN/SCN.1/1992/CRP.18/Rev.4
13 August 1992

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
New York, 10-21 August 1992

CRITERIA FOR THE IDENTIFICATION OF DEVELOPING LAND-BASED PRODUCER STATES ACTUALLY OR LIKELY TO BE AFFECTED BY SEABED PRODUCTION

Revised suggestions by the Chairman of the Ad Hoc Working Group of Special Commission 1

1. On the basis of the discussions in the Ad Hoc Working Group of Special Commission 1, on the suggestions and the three rounds of revised suggestions of the Chairman of the Group with regard to the criteria for the identification of developing land-based producer States actually or likely to be affected by seabed production, contained in documents LOS/PCN/SCN.1/1989/CRP.18 and Add.1, LOS/PCN/SCN.1/1990/CRP.18/Rev.1, LOS/PCN/SCN.1/1991/CRP.18/Rev.2 and LOS/PCN/SCN.1/1992/CRP.18/Rev.3, respectively, and the suggestions made by him during the current New York meeting, further revisions are being put forward below. Portions of these revisions which have not been agreed upon are marked by [ ] signs.

Dependency thresholds

(The following paragraph may be inserted at the end of paragraph (d) of provisional conclusion 5 contained in LOS/PCN/SCN.1/1990/CRP.16/Rev.1.)

2. With regard to the dependency thresholds, the Authority should be guided by the following:

(a) During the relevant period when applications by developing land-based producer States are submitted, either before the commencement of commercial production from the Area or after, those developing land-based producer States which earn 10 per cent or more of their total export earnings

/...

per year from the export of one or more of the four metals - copper, nickel, cobalt and manganese - shall be categorized as "dependent";

(b) If the applications are submitted before the commencement of commercial production from the Area, in the cases of certain developing land-based producer States which can demonstrate that they are likely to encounter special problems resulting from seabed production, and if the applications are submitted after the commencement of commercial production from the Area, in the cases of certain developing land-based producer States which can demonstrate that they actually encounter special problems resulting from seabed production, although their export earnings from the export of one or more of the four metals concerned, may not account for the specified percentage of their total export earnings, as above, the Authority shall determine, on a case-by-case basis, [taking into account all relevant factors,] [taking into account particularly the effects of such problems on their economy and social development,] whether they can be categorized as "dependent" or not;

(c) In calculating the percentage of total export earnings of a particular developing land-based producer State from the export of one or more of the four metals concerned, an average shall be used over a three-year period before the year of application by that developing land-based producer State.

Trigger thresholds

(The following paragraph may be inserted at the end of paragraph (e) of provisional conclusion 5 contained in LOS/PCN/SCN.1/1990/CRP.16/Rev.1.)

3. As to the trigger thresholds:

(a) In the cases of developing land-based producer States whose applications are submitted after the commencement of commercial production from the Area, the actual fall in the export earnings of a particular developing land-based producer State from the export of one or more of the four metals concerned, in the situation where there is seabed production, has to be at least 10 per cent in comparison with the situation where there is no seabed production;

(b) In the cases of developing land-based producer States whose applications are submitted before the commencement of commercial production from the Area, the estimated fall in the export earnings of a particular developing land-based producer State from the export of one or more of the four metals concerned, that is likely to result in the situation where there is seabed production, has to be at least 10 per cent in comparison with the situation where there is no seabed production;

[(c) If the actual or estimated fall in export earnings of a particular developing land-based producer State from the export of one or more of the four metals concerned is less than 10 per cent but more than 5 per cent in comparison with the situation where there is no seabed production, the Authority shall determine, on a case-by-case basis, taking into account the effects of such fall on its economy and social development, the necessary remedial measure or measures to help that particular developing land-based producer State.]

[(c) In the cases of developing land-based producer States where the actual or estimated fall in export earnings from the export of one or more of the four metals concerned is less than 10 per cent but is at least 2 per cent of the total export earnings (from all exported goods and services), in comparison with the situation where there is no seabed production, the Authority shall determine, on a case-by-case basis, whether action would be triggered.]

Least developed countries

(The following paragraph may be inserted at the end of paragraph (f) of provisional conclusion 5 contained in LOS/PCN/SCN.1/1990/CRP.16/Rev.1.)

4. In the cases of the "least developed" among the developing land-based producer States, identified in the relevant United Nations documents, the dependency thresholds and the trigger thresholds shall be reduced by 33 per cent.

[Safeguard clause

(Delete paragraphs 2 (b) and 3 (c) and insert the following paragraph.)

(The following paragraph may be inserted as new paragraph (g) at the end of provisional conclusion 5 contained in LOS/PCN/SCN.1/1990/CRP.16/Rev.1.)

5. If the applications are submitted before the commencement of commercial production from the Area, in the cases of certain developing land-based producer States which can demonstrate that they are likely to encounter special problems resulting from seabed production, and if the applications are submitted after the commencement of commercial production from the Area, in the cases of certain developing land-based producer States which can demonstrate that they actually encounter special problems resulting from seabed production, although their export earnings from the export of one or more of the four metals concerned may not account for the specified percentage of their total export earnings, as above, or although the estimated or actual fall, as the case may be, in their export earnings from the export of one or more of the four metals concerned, may not account for the specified percentage, as above, in comparison with the situation where there is no seabed production, the Authority shall determine, on a case-by-case basis, taking into account all relevant factors, bearing in mind considerations of cost-effectiveness and its work efficiency, whether an in-depth investigation needs to be carried out.]

Application of the figures

(The following paragraph may be inserted as new paragraph (h) at the end of provisional conclusion 5 contained in LOS/PCN/SCN.1/1990/CRP.16/Rev.1.)

6. Without prejudice to its right to determine other figures, taking into account the prevailing condition or situation at a certain time, the Authority shall apply the figures indicated above.

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LOS/PCN/SCN.1/1989/CRP.19
23 October 1989

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
New York, 14 August-1 September 1989

COMPENSATION FOR DEVELOPING LAND-BASED PRODUCER STATES AFFECTED BY SEA-BED PRODUCTION

(SUGGESTIONS BY THE CHAIRMAN OF THE AD HOC WORKING GROUP OF SPECIAL COMMISSION 1)

1. Among the issues mandated to the Ad Hoc Working Group, it took up the issue of compensation for developing land-based producer States (DLBPS) as a priority item. The Working Group proceeded in a step-by-step fashion to deal with that issue. The first step was to decide on the criteria to identify DLBPS affected or likely to be affected by sea-bed production. I put forward certain suggestions in document LOS/PCN/SCN.1/1989/CRP.18 and Add.1. After a discussion of those suggestions, it appeared to me that, with few modifications and with the exception of the figures, the suggestions seemed to be generally acceptable. I feel that we can now proceed to the next step, e.g., determining what kind of remedial measure there should be for helping those DLBPS affected by future sea-bed production.

2. In Special Commisssion 1, we had prolonged and intensive deliberations on the issue. The Chairman of the Special Commission has set forth in document LOS/PCN/SCN.1/1989/CRP.16 certain provisional conclusions based on those deliberations. However, the crux of the matter - the system of compensation - has to be negotiated by us here in the Working Group.

3. In the deliberations in Special Commission 1, I detected basically three schools of thought:

(a) There are a number of existing measures of global, regional and subregional organizations, of both an intergovernmental and a nongovernmental nature, which deal with the problems of DLBPS. When DLBPS are actually affected by sea-bed production in the future, these existing measures, either in their present form or in a slightly modified form, could be sufficient to minimize their difficulties;

/...

(b) Since, after sea-bed production begins, it would be essentially a matter between a developing traditional exporter State of an affected mineral and a State producing the same mineral from the Area, which had traditionally imported that mineral from the former, some form of bilateral mechanism between the two parties concerned could be the most effective way of minimizing the difficulties of the DLBPS;

(c) The Authority itself should have a measure of its own, which might be called a "compensation fund" or an "economic assistance measure", to minimize the difficulties of DLBPS.

4. It appears to me - and this may be appealing to the Working Group - that we can combine these three schools of thought. When a DLBPS is affected by sea-bed production, in the future, the Authority in co-operation with the relevant organizations will see to it that their measures are applied to the DLBPS. The Authority will then have an idea as to whether those measures are sufficient to address the problems of the DLBPS. If there are still problems remaining, the Authority will encourage the DLBPS and its traditional importing partners, who are also sea-bed miners, to enter into bilateral arrangements so as to minimize further the difficulties of DLBPS. If there are still problems remaining, the Authority could then administer assistance from its own "compensation fund" or "economic assistance measure", albeit after a thorough examination as per the suggestions of the Chairman of Special Commission 1 contained in documents LOS/PCN/SCN.1/1987/CRP.14 and CRP.9.

5. I put forward these suggestions about the possible combination of the three schools of thought for your consideration. I would welcome your views on these suggestions.

LOS/PCN/SCN.1/1990/CRP.19/Rev.1
2 August 1990

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
New York, 13-31 August 1990

COMPENSATION FOR DEVELOPING LAND-BASED PRODUCER STATES AFFECTED BY SEA-BED PRODUCTION (REVISED SUGGESTIONS BY THE CHAIRMAN OF THE *AD HOC* WORKING GROUP OF SPECIAL COMMISSION 1)

(*Assistance to developing land-based producer States likely to be or actually affected by sea-bed production*)

1. The Chairman of the *Ad Hoc* Working Group of Special Commission 1 had put forward, in document LOS/PCN/SCN.1/1989/CRP.19, certain suggestions with regard to assistance to developing land-based producer States affected by sea-bed production. Those suggestions were discussed extensively in the Working Group during the 1989 summer meeting and the eighth session of the Preparatory Commission. It appears to the Chairman of the Working Group that certain revisions need to be incorporated to facilitate agreement among delegations regarding the suggestions. The following revisions are being put forward for this purpose.

2. (a) With respect to developing land-based producer States likely to suffer adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, the Authority, in accordance with articles 164 (c) and 162 (m), shall take necessary and appropriate measures of economic adjustment assistance with a view to providing protection to such States from the adverse effects, priority being accorded, pursuant to article 151 (10), to those developing land-based producer States likely to be most seriously affected.

(b) With respect to developing land-based producer States which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, the

Authority, in accordance with articles 151 (10), 164 (d), 162 (n) and 160 (1), shall take appropriate measures of economic adjustment assistance with a view to, *inter alia*, providing compensation, to a certain extent, to such States for the serious adverse effects.

3. The determination of appropriate measures will be made by the Authority on a case-by-case basis for particular developing land-based producer States:

(a) On the basis of in-depth investigations, referred to in provisional conclusion 6, carried out in accordance with the provisions of the *chapeau* of the provisional conclusions (see LOS/PCN/SCN.1/1990/CRP.16/Rev.1); and

(b) In close collaboration with, and obtaining support from, the United Nations, specialized agencies and relevant global, interregional, regional or subregional organizations, as well as the States producing a similar mineral from the resources of the Area which traditionally used to import that mineral from the developing land-based producer States in question.

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LOS/PCN/SCN.1/1991/CRP.19/Rev.2
27 February 1991

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
Kingston, 25 February-22 March 1991

[COMPENSATION FOR][1] ASSISTANCE TO[2] DEVELOPING LAND-BASED PRODUCER STATES [AFFECTED] LIKELY TO BE OR ACTUALLY AFFECTED BY SEA-BED PRODUCTION (REVISED SUGGESTIONS BY THE CHAIRMAN OF THE *AD HOC* WORKING GROUP OF SPECIAL COMMISSION 1)

[Assistance to developing land-based producer States likely to be or actually affected by sea-bed production]

1. The Chairman of the *Ad Hoc* Working Group of Special Commission 1 had put forward, in document LOS/PCN/SCN.1/1989/CRP.19, certain suggestions with regard to assistance to developing land-based producer States affected by sea-bed production. Those suggestions were discussed extensively in the Working Group during the 1989 summer meeting and the eighth session of the Preparatory Commission. It [appears] appeared to the Chairman of the Working Group that certain revisions [need] needed to be incorporated to facilitate agreement among delegations regarding the suggestions. [The following revisions are being put forward for this purpose.] Such revisions had been put forward by the Chairman in document LOS/PCN/SCN.1/1990/CRP.19/Rev.1. These revised suggestions were discussed in the Working Group during the 1990 summer meeting. As pointed out in the report of the Chairman at the conclusion of that meeting, "it is the assessment of the Chairman that a productive negotiating atmosphere is prevailing in the Group, and this atmosphere should be put to use in furthering the objective of achieving agreement among delegations. To this end, he intends to issue a second revision of CRP.19 .... reflecting the general trends observed during the deliberations." Such a second revision is put forward in the following.

2. (a) With respect to developing land-based producer States likely to suffer adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, [the Authority, in accordance with articles 164 (c) and 162 (m), shall take necessary and appropriate measures of economic adjustment assistance with a view to providing protection] the Council shall, in accordance with article 162 (2)(m), take, upon the recommendation of the Economic Planning Commission, in conformity with article 164 (2)(c), necessary and appropriate measures, to provide protection to such States from the adverse effects, priority being accorded, pursuant to article 151 (10), to those developing land-based producer States likely to be most seriously affected.

/...

(b) With respect to developing land-based producer States which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, [the Authority, in accordance with articles 151 (10), 164(d), 162 (n) and 160 (1), shall take appropriate measures of economic adjustment assistance with a view to, *inter alia*, providing compensation, to a certain extent, to such States for the serious adverse effects.] as referred to in article 151(10), the Assembly shall, upon the recommendation of the Council on the basis of advice from the Economic Planning commission, in accordance with articles 151(10), 160(2)(l), 162(2)(n) and 164 (2)(d), establish a system of compensation or take other measures of economic adjustment assistance including co-operation with specialized agencies and other international organizations, pursuant to paragraph 3 below, to assist such developing States.

3. (a) The determination of [appropriate] the above-mentioned measures will be made by the Authority on a case-by-case basis for particular developing land-based producer States[:]

[(a) On] on the basis of an in-depth investigation[s] referred to in provisional conclusion 6, carried out in accordance with the provisions of the *chapeau* of the provisional conclusions (see LOS/PCN/SCN.1/1990/CRP.16/Rev.1)[;], an integral part of which will be the examination of an appropriate combination of the existing economic measures, referred to in provisional conclusion 12, bilateral measures, referred to in provisional conclusion 13, and the Authority's own measures, referred to in provisional conclusion 14; [and]

(b) The in-depth investigation including the examination of the appropriate measures, shall be carried out

[(b) In] in close collaboration with, and obtaining support from, the United Nations, specialized agencies and relevant global, interregional, regional or subregional organizations, as well as the States producing a similar mineral from the resources of the Area which traditionally used to import that mineral from the developing land-based producer States in question.

4. While considering the formulation of a measure of its own, the Authority should examine thoroughly the extent of resource constraints faced by it, the possibilities of mobilizing resources in spite of the constraints,and the most effective way the resources could be utilized, however limited they may be.

Notes

1/ Texts to be deleted are marked by [ ] sign.

2/ New texts to be inserted are marked by underlining.

LOS/PCN/SCN.1/1992/CRP.19/Rev.3
17 August 1992

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
New York, 10-21 August 1992

ASSISTANCE TO DEVELOPING LAND-BASED PRODUCER STATES LIKELY TO BE OR ACTUALLY AFFECTED BY SEABED PRODUCTION

Revised suggestions by the Chairman of the Ad Hoc Working Group of Special Commission 1

1. On the basis of the discussions in the Ad Hoc Working Group of Special Commission 1, on the suggestions and the two rounds of revised suggestions of the Chairman of the Group with regard to assistance to developing land-based producer States likely to be or actually affected by seabed production, contained in documents LOS/PCN/SCN.1/1989/CRP.19, LOS/PCN/SCN.1/1990/CRP.19/Rev.1 and LOS/PCN/SCN.1/1991/CRP.19/Rev.2, respectively, and the suggestions made by him during the current New York meeting, further revisions are being put forward below. Portions of these revisions which have not been agreed upon appear within square brackets.

Authority's own measures

(The following paragraph may replace provisional conclusion 14 contained in LOS/PCN/SCN.1/1990/CRP.16/Rev.1.)

2. For the purpose of provisional conclusion[s] [10 and] 11 (contained in LOS/PCN/SCN.1/1990/CRP.16/Rev.1), with regard to its own measures:

(a) The Authority could consider formulating a measure of its own [, either an economic adjustment assistance measure, or as situation warrants, a compensation measure,] by creating a [special] fund;

(b) Such a fund could be financed from the following sources:

(i) A percentage of the revenues from the profits of the Enterprise;

(ii) A percentage of revenues from the profits of other operators in the Area; and

(iii) Voluntary contributions made by members or other entities;

(c) Subject to criteria to be drawn up by the Authority, the fund would be used to help finance projects and/or programmes in affected developing land-based producer States with the potential to bring about economic adjustment and improve capability to counter adverse effects of activities in the Area. Such projects and/or programmes could be directed at areas that include: diversification of economies; possibilities of the establishment of viable downstream activities, nationally or regionally; improvement of efficiency and retraining of workforce in the mining sector. The fund could also be used for the provision of technical assistance, and soft loans and/or grants, etc., as appropriate.

[(d) If such a measure as above is formulated, it would be established by the Assembly, upon the recommendation of the Council on the basis of advice from the Economic Planning Commission.]

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LOS/PCN/SCN.1/1991/CRP.20
19 February 1991
ENGLISH
ORIGINAL: ENGLISH, FRENCH
AND SPANISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY AND
FOR THE INTERNATIONAL TRIBUNAL FOR
THE LAW OF THE SEA
Special Commission 1
Ninth session
Kingston, Jamaica
25 February-22 March 1991

SUGGESTED AMENDMENTS TO THE CHAPEAU AND PROVISIONAL CONCLUSIONS 1-4 OF DOCUMENT LOS/PCN/SCN.1/1990/CRP.16/Rev.1

Proposals by the delegation of the European Economic Community and its member States

Chapeau

In carrying out any studies or assessments and in establishing any database, */ the Authority has to make use of pertinent data, information, analysis, studies and forecasts available from national, subregional, regional, interregional or global organizations, intergovernmental or non-governmental, public or private, */ and */ conduct such studies and assessments as may be needed in addition to existing studies or assessments, in the most cost-effective manner in cooperation with, and obtaining support from, the relevant organizations.

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*/ Text deleted.

/...

Section 1. PRODUCTION FROM THE AREA

*/

Provisional conclusion 1

Minerals of the Area and metals contained in those minerals

(a) The Authority should concentrate its work on polymetallic nodules, including the projected timing of commercial production from the Area. It should also keep in view the trends and developments regarding sea-bed minerals other than polymetallic nodules, for example, polymetallic sulfides, cobalt-rich crusts, etc.

(b) The Authority should concentrate its work on copper, nickel, cobalt and manganese to be extracted from polymetallic nodules. It should also keep in view the trends and developments regarding the other metals */ contained in polymetallic nodules.

Provisional conclusion 2

Consideration of the mineral situation with or without sea-bed production

The Authority should collect available data and information on future sea-bed mining activities in the Area as well as existing forecasts. The Authority should consider and comment upon the latest forecasts when it has authorized the first plan of work for exploitation.

Section 2. APPLICATION BY DEVELOPING LAND-BASED PRODUCER STATES AND CONSIDERATION OF APPLICATION

*/

Provisional conclusion 3

Application by developing land-based producer States likely to suffer adverse effects from sea-bed production

(a) Before the commencement of commercial production from the Area, a developing land-based producer State which considers itself likely to suffer adverse effects from future sea-bed production could submit an application to the Secretary-General, */ and in the application it should include the following:

(i) It must identify that it is a developing land-based producer State by providing statistics on production, volume of exports and export earnings of one or more of the four metals concerned for the last five years;

(ii) It must present projections of its production, volume of exports and export earnings from one or more of the four metals concerned, in a situation where sea-bed production does not occur;

(iii) It must present the same projections of the above variables, in a situation where sea-bed production occurs;

(iv) It should make proposals on adjustment measures necessary to adapt its economy to the changing circumstances;

(v) It must present such other data and information as required by rules of the Authority.

(b) Such applications may be submitted from the time of the first submission of a plan of work for exploitation.

(c) Having received the application, the Secretary-General shall determine whether sufficient evidence exists to carry out an in-depth investigation by applying the criteria specified in provisional conclusion 5 below and shall consequently inform the Economic Planning Commission.

(d) If the Secretary-General determines that an in-depth investigation needs to be carried out, he/she shall inform the relevant international organizations, which might provide assistance, of the application.

The relevant international organizations shall study the measures necessary, and the assistance to be provided, together with the developing country in question and the Authority, as appropriate, in accordance with their normal procedures.

(e) After agreement has been reached on the necessary measures by the organizations involved, the Secretary-General shall inform the Council and the Economic Planning Commission.

Provisional conclusion 4

Applications by developing land-based producer States which consider themselves adversely affected by sea-bed production

(a) After the commencement of commercial production from the Area, a developing land-based producer State which considers itself adversely affected by sea-bed production could submit an application to the Secretary-General, and in the application it should include the following:

(i) It must identify that it is a developing land-based producer State by providing statistics on production, volume of exports and export earnings from one or more of the four metals concerned for the last five years;

(ii) It must identify the changes that */ occurred because of sea-bed production: decrease in price, decrease in volume of exports, decrease in export earnings, other effects on its economy, i.e., decrease in GDP or GNP, decrease in rate growth of GDP or GNP, decrease in level of employent, decrease in foreign exchange reserves, etc.;

(iii) It must indicate why it considers that the above effects have been brought about as a result of sea-bed production and not as a result of other factors;

(iv) It should make proposals on adjustment measures necesary to adapt its economy to the changed circumstances;

(v) It must present such other data and information as required by rules of the Authority.

(b) Having received the application, the Secretary-General should determine whether sufficient evidence exists to carry out an in-depth investigation by applying the criteria specified in provisional conclusion 5 below and shall consequently inform the Economic Planning Commission.

(c) If the Secretary-General determines that an in-depth investigation needs to be carried out, he/she shall inform the relevant international organizations, which might provide assistance, of the application.

The relevant international organizations shall study the measures necessary, and the assistance to be provided, together with the developing country in question and the Authority, as appropriate, in accordance with their normal procedures.

(d) After agreement has been reached on the necessary measures by the organizations involved, the Secretary-General shall inform the Council and the Economic Planning Commission.

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LOS/PCN/SCN.1/1991/CRP.20/Rev.1
18 March 1991

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY AND
FOR THE INTERNATIONAL TRIBUNAL FOR
THE LAW OF THE SEA
Special Commission 1
Ninth session
Kingston, Jamaica
25 February-22 March 1991

SUGGESTED AMENDMENTS TO DOCUMENT LOS/PCN/SCN.1/1990/CRP.16/Rev.1

Proposals by the delegations of the European Economic Community and its member States

(This document reproduces the content of CRP.20 and contains the additional amendments to CRP.16/Rev.1)

1) Chapeau and provisional conclusions 1-4. These texts should read as follows:

"Chapeau

In carrying out any studies or assessments and in establishing any database, */ the Authority has to make use of pertinent data, information, analysis, studies and forecasts available from national, subregional, regional, interregional or global organizations, intergovernmental or non-governmental, public or private, */ and */ conduct such studies and assessments as may be needed in addition to existing studies or assessments, in the most cost-effective manner in cooperation with, and obtaining support from, the relevant organizations.

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*/ Text deleted.

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Section 1. PRODUCTION FROM THE AREA

*/

Provisional conclusion 1

Minerals of the Area and metals contained in those minerals

(a) The Authority should concentrate its work on polymetallic nodules, including the projected timing of commercial production from the Area. It should also keep in view trends and developments regarding seabed minerals other than polymetallic nodules, for example, polymetallic sulfides, cobalt-rich crusts, etc.

(b) The Authority should concentrate its work on copper, nickel, cobalt and manganese to be extracted from polymetallic nodules. It should also keep in view trends and developments regarding the other metals */ contained in polymetallic nodules.

Provisional conclusion 2

Consideration of the mineral situation with or without seabed production

The Authority should collect available data and information on future seabed mining activities in the Area as well as existing forecasts. The Authority should consider and comment upon the latest forecasts when it has authorized the first plan of work for exploitation.

Section 2. APPLICATION BY DEVELOPING LAND-BASED PRODUCER STATES AND CONSIDERATION OF APPLICATIONS

*/

Provisional conclusion 3

Applications by developing land-based producer States likely to suffer adverse effects from seabed production

(a) Before the commencement of commercial production from the Area, a developing land-based producer State which considers itself likely to suffer adverse effects from future seabed production may submit an application to the Secretary-General, */ and in the application it should include the following:

(i) It must indicate that it is a developing land-based producer State by providing statistics on production, volume of exports and export earnings of one or more of the four metals concerned for the last five years;

(ii) It must present projections of its production, volume of exports and export earnings from one or more of the four metals concerned, in a situation where seabed production does not occur;

(iii) It must present the same projections of the above variables, in a situation where seabed production occurs;

(iv) It should make proposals on adjustment measures necessary to adapt its economy to the changing circumstances;

(v) It must present such other data and information as required by rules of the Authority.

(b) Such applications may be submitted from the time of the first submission of a plan of work for exploitation.

(c) Having received the application, the Secretary-General shall determine whether sufficient evidence exists to carry out an in-depth investigation by applying the criteria specified in provisional conclusion 5 below and shall consequently inform the Economic Planning Commission.

(d) If the Secretary-General determines that an in-depth investigation needs to be carried out, he/she shall inform the relevant international organizations, which might provide assistance, of the application.

The relevant international organizations shall study the measures necessary, and the assistance to be provided, together with the developing country in question and the Authority, as appropriate, in accordance with their normal procedures.

(e) After agreement has been reached on the necessary measures by the organizations involved, the Secretary-General shall inform the Council and the Economic Planning Commission.

Provisional conclusion 4

Applications by developing land-based producer States which consider themselves adversely affected by sea-bed production

(a) After the commencement of commercial production from the Area, a developing land-based producer State which considers itself adversely affected by sea-bed production could submit an application to the Secretary-General, and in the application it should include the following:

(i) It must identify that it is a developing land-based producer State by providing statistics on production, volume of exports and export earnings from one or more of the four metals concerned for the last five years;

/...

(ii) It must identify the changes that */ occurred because of sea-bed production: decrease in price, decrease in volume of exports, decrease in export earnings, other effects on its economy, i.e., decrease in GDP or GNP, decrease in rate growth of GDP or GNP, decrease in level of employent, decrease in foreign exchange reserves, etc.;

(iii) It must indicate why it considers that the above effects have been brought about as a result of sea-bed production and not as a result of other factors;

(iv) It should make proposals on adjustment measures necesary to adapt its economy to the changed circumstances;

(v) It must present such other data and information as required by rules of the Authority.

(b) Having received the application, the Secretary-General should determine whether sufficient evidence exists to carry out an in-depth investigation by applying the criteria specified in provisional conclusion 5 below and shall consequently inform the Economic Planning Commission.

(c) If the Secretary-General determines that an in-depth investigation needs to be carried out, he/she shall inform the relevant international organizations, which might provide assistance, of the application.

The relevant international organizations shall study the measures necessary, and the assistance to be provided, together with the developing country in question and the Authority, as appropriate, in accordance with their normal procedures.

(d) After agreement has been reached on the necessary measures by the organizations involved, the Secretary-General shall inform the Council and the Economic Planning Commission.

(e) If the Authority is in a position to contribute to the financing of the measures agreed upon by the organizations involved, the Secretary General shall submit relevant proposals to the Economic Planning Commission and the Finance Committee. They shall submit their recommendations to the Council for final decision."

NOTE Ad e): Various sources of revenue for the Authority are specified in the Convention. If sufficient funds should be available, there is no objection to the use of these by the Authority to contribute, on a co-financing basis, to economic adjustment or technical assistance programmes of the appropriate international institutions in affected developing land-based producer States.

2) Provisional conclusion 5

NOTE: General reservation pending the results of the examination of CRP.18 /Rev.2 within the Ad Hoc Working Group.

/...

3) Provisional conclusions 6 and 8

NOTE: It is suggested to supplement CRP.16/Rev.1 with a technical annex. This annex would contain a list of data that could be collected and studies that could be carried out by the international organizations responsible for examining a developing land-based producer State's request. This annex would thus include certain aspects currently contained in provisional conclusions 6 and 8 of CRP.16/Rev.1 which consequently are no longer necessary among the provisional conclusions.

4) Provisional conclusion 7

This provisional conclusion should be deleted.

NOTE: Making general assessment on a short, medium and long-term basis of the relationship between production from the Area and existing land-based production would not serve any useful purpose as no standard of comparison would exist at least before the time of the presentation of the first submission of a plan of work for exploitation.

5) Provisional conclusion 9

This provisional conclusion should be deleted.

NOTE: General studies as provided for in this provisional conclusion would not be of use when dealing with the problems of individual affected States. Studies should be undertaken only when an application has been filed.

6) Provisional conclusion 10

This provisional conclusion should be deleted.

NOTE: The issue detailed in provisional conclusion 10 is already dealt with in provisional conclusions 3 and 4.

7) Provisional conclusions 11 and 14

These provisional conclusions should be deleted.

NOTE: The Community and its Member States would oppose the setting-up of a compensation fund, since they do not believe that compensation as such would be the most appropriate and effective way of solving any problems that might arise. The payment of compensation would only yield temporary relief for affected developing land-based producer States and would as a result tend to the preservation of economic structures which no longer correspond to economic realities. Instead, assistance measures should aim at adjustment of the economic structures of the affected developing land-based producer States to the changed circumstances by promoting diversification and growth in other sectors, leading to an increase of exports or a replacement of imports. This is the only way to offset adverse effects of Sea-Bed mining on the export earnings of affected developing land-based producer States.

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8) Provisional conclusion 12

This provisional conclusion should be deleted.

NOTE: The measures detailed in this provisional conclusion are already dealt with in provisional conclusinons 3 and 4.

9) Provisional conclusion 13

This provisional conclusion should be deleted.

NOTE: The Community and its member States do not favor the role of the Authority with respect to bilateral agreements as envisaged in this provisional conclusion because the participation of the Authority in such agreements would tend to distort competition.

10) Provisional conclusion 15

This provisional conclusion should be deleted.

NOTE: The content of this provisional conclusion is incorporated in provisional conclusions 3 and 4.

11) Provisional conclusion 16

NOTE: General reservation pending the conclusion of negotiations on the matter of subsidies in the Uruguay Round.

12) Provisional conclusion 17

This provisional conclusion should be deleted.

NOTE: Commodity agreements on minerals, on which a Secretariat's paper is still expected, are not an appropriate means for solving structural problems of producing countries. They can at best smoothen short term market fluctuations, but not change the long term market trends.

13) Provisional conclusion 1 of Annex I

This provisional conclusion should read as follows:

"The Authority needs data and information to implement the above provisional conclusions.

The Authority shall develop and maintain cost effective data bases with respect to data and information that are necessary to implement the tasks assigned to it in the above provisional conclusions. In developing and maintaining such data bases the Authority has primarily to use data and information collected and stored by other national, subregional, regional, interregional or global organizations, intergovernmental or non-governmental, public or private. The Authority itself shall only collect such data and information which are not collected by other organizations."

/...

14) Provisional conclusion 2 of Annex I

Delete in b) the words "and non-metallic elements".

15) Provisional conclusion 4 of Annex I

Delete paragraphs (a) (vi) to (xi), (b) and (c).

NOTE: These data and information are not necessary for the implementation of the tasks of the Authority as outlined in our above proposals for provisional conclusions.

16) Provisional conclusion 5 of Annex I

This provisional conclusion should be deleted.

NOTE: The data will either be assembled following provisional conclusion 4 of Annex I or be submitted by a developing land-based producer State when filing an application. Therefore there is no need for the Authority to collect and store these last data.

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LOS/PCN/SCN.1/1991/CRP.21
12 March 1991

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
Ninth session
Kingston, 25 February-22 March 1991

POSITION OF THE GROUP OF 77 REGARDING THE CHAPEAU AND THE PROVISIONAL CONCLUSIONS CONTAINED IN DOCUMENT LOS/PCN/SCN.1/1990/CRP.16/REV.1

INTRODUCTION

Resolution 1, paragraph 5(i) has mandated the Preparatory Commission to undertake studies on the problems which would be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the international Area with a view to minimizing their difficulties and helping them to make the necessary economic adjustment, including studies on the establishment of a compensation fund, and submit recommendations to the International Sea-Bed Authority thereon.

PROVISIONAL CONCLUSIONS

Chapeau

The G.77 has no difficulty with the chapeau.

Note:1. The Chapeau is important as a preamble to the conclusions which will be turned into recommendations.

2. It contains the basic principles and philosophy underlying the conclusions reached after deliberations in the Special Commission.

Section 1. PROJECTION OF PRODUCTION FROM THE AREA

The introduction is acceptable to the G.77 except that the reference to "non-metallic elements" should be deleted.

Provisional conclusion 1

Minerals of the Area and metals contained in those minerals

(a) Acceptable to the G.77.

(b) Acceptable to the G.77 except that the reference to "non-metallic elements" should be deleted.

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Provisional conclusion 2

Forecast of mineral situation with or without sea-bed production

The G.77 has no substantial difficulties.

Note: It is important that the Authority should make its own forecasts of the mineral situation with or without sea-bed production in order that proper and adequate in-depth studies are carried out by the Authority when an application is received from a developing land-based producer State (DLBPS). The Authority should not merely collect existing data as suggested by the EEC.

Section 2. APPLICATION BY DEVELOPING LAND-BASED PRODUCER STATES AND CONSIDERATION OF APPLICATION

Provisional conclusion 3

Application by developing land-based producer States likely to suffer adverse effects from sea-bed production

(a) Acceptable to the G.77.

Note: Applications from affected DLBPS should be sent to the Authority through the Economic Planning Commission in accordance with the appropriate provisions of the Convention such as articles 164 (2)(c) and 151 (10). Such applications should not be sent through the Secretary-General as nowhere in the Convention does it say, and even imply, that such a procedure could be followed. It would be more efficacious to submit applications to a technical body rather than the Secretary-General who will be an administrator and not a technician.

(i) The G.77 will encounter no major problem with this.

At the end of the paragraph add "as available".

(ii) and (iii) The G.77 accepts these.

Note: The G.77 believes that the type of assistance that should be given to the affected DLBPS should be such as to assist in alleviating the adverse effects of sea-bed mining on such a DLBPS and thus provide it with protection from such adverse economic effects. Such assistance should not merely be confined to adjustment measures as suggested by the EEC.

/...

The G.77 is also not aware of any other data and information received by the Authority from the DLBPS applicant as suggested by the EEC, except from the data and information already covered by subparagraphs (ii) and (iii). The G.77 therefore suggests that two subparagraphs be added to read:

"(iv) It must indicate what kind of assistance measures it requires and to what extent, in order to provide protection against economic effects due to sea-bed production."

"(v) The Authority, if requested by the DLBPS, may assist in providing technical assistance in analyzing and processing data and information required under subparagraph (i) above".

(b) Acceptable to the G.77.

Note: Since provisional conclusion 3 is referring to applications to be received from DLBPS "likely" to suffer adverse effects from sea-bed production, applications should not be restricted to commence only from the time of the first submission of a plan of work for exploitation as suggested by the EEC.

(c) Acceptable to the G.77.

Note: It is extremely important to appreciate the normal procedural steps that are followed in most organizations where similar applications are received that it is always the technical subsidiary body which receives such applications and not the administrative head of such an organization. The Secretary-General does not have in the Convention, and will not have in practice, a "filtering" role as suggested by the EEC. All applications should first be received by the Economic Planning Commission which would then recommend to the Council and then the Assembly of the Authority.

(d) Acceptable to the G.77.

Note: The G.77 totally rejects attempts by the EEC to shift the primary responsibility of providing assistance to DLBPS from the Authority to other international and multinational organizations. The Authority should not act merely as a "post office" that will simply receive applications for assistance from a DLBPS and then pass it on to an international organization. Such a proposal would not be in conformity with the letter and spirit of the Convention which has clearly stated the role of the Authority in various provisions, including articles 150 (h), 151 (10), 160 (2) (l), 162 (2) (m), and (n), 164 (2) (d), 171 (f), 173 (2) (c) and Resolution 1 (5) (i) and (9).

The proposal by the EEC that requests for assistance should be directed by the Authority to other organizations and that the Authority itself should not conduct any studies on the likely impact of deep sea-bed mining on the economies of DLBPS, is not only unacceptable to the G.77 but clearly would not work. Firstly such international organizations had no legal and any obligation to carry

/...

out such studies and secondly such organizations would simply indicate that they did not possess mandate in their programmes to undertake studies on sea-bed production effects and related matters, and that their budgets did not accommodate such activities.

The suggestion by the EEC that assistance should come from international organizations which had already assistance programmes in place in the DLBPS is unworkable since there are DLBPS where there would not be such assistance programmes in place. No study or assistance would therefore be available in such a DLBPS.

Further in the EEC proposal it is not indicated how the Authority would ensure that the required in-depth study was actually done by the relevant international organization and the measures necessary are taken and the assistance is provided.

Provisional conclusion 4

Application by developing land-based producer States which consider themselves affected by sea-bed production

(a) The G.77 has no particular problem.

Add the words "adversely affected".

Note: The G.77 rejects attempts by the EEC to substitute the Secretary-General for the Economic Planning Commission, as the recipient of the application from a DLBPS.

(i) Acceptable to the G.77.
At the end of the subparagraph add the words "as available".

(ii) Acceptable to the G.77.

Note: Since it is the particular DLBPS which would identify the changes in its economic situation, it is a subjective test and therefore the words "it feels" can be retained in the subparagraph.

(iii) Acceptable to the G.77.

Note: Clearly the DLBPS, in its application, will present all facts, data and information indicating "how" the effects have been brought about by sea-bed production and not "why". It is the effects of sea-bed mining which are important to be determined. The G.77 suggests that subparagraph (v) be added to read as follows:

"(v) The Authority, if requested by the DLBPS, may assist in providing technical assistance in analyzing and processing data and information required under subparagraph (i) above."

(iv) The G.77 has no major difficulty.

Note: In the EEC proposal it would appear as if even the term "assistance" is unacceptable when that is the underlying principle in the Convention that an affected DLBPS should be provided with assistance.

/...

(b) Acceptable to the G.77.

(c) The G.77 would accept this.

__Note__: The G.77 position regarding the proposals by the EEC to shift responsibility from the Authority to the other international organizations is as stated under provisional conclusion 3. The G.77 does not appreciate the need, as suggested by the EEC, for the Secretary-General to merely "inform" the Economic Planning Commission and the Council when such bodies will be expected to do nothing in the EEC scheme of things.

Provisional conclusion 5

Criteria for undertaking in-depth investigation with a view to determining appropriate measures

(a), (b), (c), (d), (e), (f), could be acceptable as discussed in the *Ad Hoc* Working Group.

The G.77 generally supports the proposals contained in CRP.18./Rev.2 regarding the question of dependency thresholds and trigger thresholds except that the figures should be reduced further, and in paragraph 2(c) of CRP.18/Rev.2 the word "justify" should be substituted with "can indicate."

In paragraph 3 of CRP.18/Rev.2, the reference to forecasts as contained in CRP.18/Rev.1, paragraph 3(b) should be retained.

Provisional conclusion 6
In-depth investigation

(a) Acceptable to the G.77.

(b) Acceptable to the G.77.

(c) Acceptable to the G.77.

(d) Acceptable to the G.77.

(e) Acceptable to the G.77.

(f) Acceptable to the G.77.

(g) Acceptable to the G.77.

__Note__: This provisional conclusion is important as it gives details of how the in-depth investigation is to be conducted by the Economic Planning Commission. It provides for terms of reference for such an investigation.

The G.77 in reference to paragraph (f) above would wish that paragraphs 2 and 3 of CRP.18/Rev.2 should include reference to "effects on economies."

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Provisional conclusion 7

Assessment of relationship between production from the Area and existing land-based production

(a) The G.77 accepts this.

(b) The G.77 accepts this.

Note: This provisional conclusion is critical because it will provide the basis for an in-depth study by the Authority of a general nature whose results will assist in determining those DLBPS likely to suffer adverse effects of sea-bed production.

Suggestions by the EEC therefore to delete this provisional conclusion would defeat the concept of the "likelihood of adverse effects" which the EEC has already accepted in provisional conclusion 3.

Provisional conclusion 8

Potential or actual effects of sea-bed production

(a) Acceptable to the G.77

(b) Acceptable to the G.77

(c) Acceptable to the G.77

(i) Acceptable to the G.77

(ii) Acceptable to the G.77.

(iii) acceptable to the G.77.

(d) Acceptable to the G.77.

(e) Acceptable to the G.77.

(i) Acceptable to the G.77

(ii) Acceptable to the G.77.

(iii) Acceptable to the G.77.

(iv) Acceptable to the G.77.

(f) Acceptable to the G.77.

Note: The provisional conclusion is important as it outlines the methodology to be applied in carrying out the mandate of in-depth investigations of adverse effects of sea-bed production on the export earnings and economies of DLBPS.

It also makes provision for the Authority to carry out measurement of actual effects after sea-bed production has commenced.

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Provisional conclusion 9

Determination of problems linked with effects of sea-bed production

(a) The G.77 agrees with this.

(b) Acceptable to the G.77.

Note: The reasons why the G.77 supports this provisional conclusion is stated above at provisional conclusion 7.

The proposal by the EEC to delete this provisional conclusion is therefore not acceptable to the G.77.

Provisional conclusion 10

Assistance to developing land-based producer States likely to suffer adverse effects from sea-bed production

The G.77 accepts this.

Note: Although the contents of this provisional conclusion is closely related to some parts of provisional conclusions 3 and 4, it is still very important that this provisional conclusion is retained as a specific statement of the need for the Authority to provide for assistance to the DLBPS which is found, after an in-depth study and investigation, to likely suffer adverse effects. The provisional conclusion further outlines the specific steps that the Economic Planning Commission will take in recommending to the Council and what the Council will do after that.

Provisional conclusion 11

Assistance to developing land-based producer States which suffer serious adverse effects from sea-bed production

(a) Acceptable to the G.77.

(b) Acceptable to the G.77.

(c) Acceptable to the G.77.

Note: The G.77 believes that, contrary to what the EEC seems to imply, the Convention is not ambiguous and open to different interpretations on the question of setting up of a compensation fund. The wording in the Convention is very precise and exact. Throughout the Convention there is mention of a system of compensation or compensation fund. The substance is not therefore subject to discussion and negotiation but the methodology of setting up such a system and how it will operate is what should be discussed and analyzed.

The various results which the EEC indicates would follow from economic adjustments (such as promoting diversification and growth in other sectors, increase of exports or a replacement of imports) are

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all only possible with specific economic programmes in the affected countries and could only be carried out with the availability of funds. Such resources are best pooled in a fund controlled by the Authority out of which specific economic programmes can be undertaken in affected DLBPS.

The legislative history of the system of compensation and/or a compensation fund is well documented in the Commission (see LOS/PCN/SCN.1/WP.10 of 2 March 1987). The Secretariat has also adequately commented on the provisions of the Convention dealing with a system of compensation (See LOS/PCN/SCN.1/WP.9 of 4 August 1986). The modalities of the establishment of a compensation fund and/or a system of compensation: financial considerations has been issued by the Secretariat (See LOS/PCN/SCN.1/WP.12 of 1 March, 1988).

As one reads articles 151 (10), 160 (2) (l), 162 (2) (n), 164 (2) (d), 171 (f) and 173 (2) (c) and Resolution 1, paragraphs 5(i) and 9, it is quite clear what the intention has always been of the Convention on the issue. Possible sources of the finances for such a fund is also clearly spelt out.

Because the law and principles are clear on the issue, what the G.77 wishes to emphasize is that whichever variety of economic relief measure or measures are to be administered or implemented by the Authority, the goal is, and must be, to minimize the difficulties of the affected DLBPS and assist them in their economic adjustment. The creation of a compensation fund is one valid and specified option or strategy envisaged in the Convention that the Authority could adopt and must adopt in order to provide itself with a reliable system of compensation which will make available the necessary financial resources to meet the costs of the economic relief measure or measures.

The sources of funds for the Compensation Fund could be (i) a percentage of the revenue from the profits of the Enterprise to be allocated to resources of the Compensation Fund on a regular basis (article 173 (2) (c)), (ii) a percentage of the revenue from the profits of other operators in the Area, and (iii) voluntary contributions made by Member States and other entities.

The utilization of the funds from the Compensation Fund, as pointed out earlier, would be directed at projects and programmes of the affected DLBPS to bring about economic adjustment. Such projects should include

(i) provision of technical assistance,
(ii) diversification of economies,
(iii) establishment of national or regional processing plants, and
(iv) provision of soft loans or grants.

(See G.77 paper LOS/PCN/SCN.1/1986/CRP.12 of 27 August 1986).

It must be emphasized that the G.77 does not oppose the idea and concept of economic adjustment but it believes that for such economic adjustment to be workable and realistic, there has to be a fund out of which the resources for the adjustment will flow. Experience in

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many developing countries in the last decade has shown that where economic adjustment programmes have been implemented (including auctioning of foreign exchange, devaluation of the local currencies, removal of subsidization on the production of staple and essential commodities), such well-intentioned programmes have failed in the absence of a proper, adequate and reliable source of funds to support such structural adjustment programmes. The result has been chaos and untold miseries in such countries.

Provisional conclusion 12
Existing economic measures

(a) The G.77 has no particular difficulty.

Note: However, the paragraph should be redrafted to read as follows:

" (a) The Authority, in providing assistance to DLBPS in accordance with article 151 (10) of the Convention, under its auspices and not outside its ambit, should co-operate with the United Nations, specialized agencies and other international organizations, as well as with other global, interregional, regional and subregional organizations."

(b) Acceptable to the G.77.

(c) Acceptable to the G.77.

(d) Acceptable to the G.77.

Note: This provisional conclusion should not be deleted as suggested by the EEC because it is the link that is required for the Authority to be able to request existing international organizations to provide assistance of any sort including providing funds for the Compensation Fund.

In the scheme of things as suggested by the EEC, therefore, without such a nexus, and once an existing multinational or international organization requires to assist, then the creative programme of providing assistance to an affected DLBPS will fall away.

(e) Acceptable to the G.77.

Note: It is important to recall that such assistance from existing bodies should only be seen as supplementary and not primary since the first obligation to provide assistance lies on the Authority as the custodian of the Convention, which embodies the principle of the common heritage of mankind.

Provisional conclusion 13

Bilateral measures

(a), (b) and (c) The G.77 has no strong feelings either way.

This was proposed by some delegations, which ought to restate their position as to whether they still support the original concept of bilateral agreements.

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Provisional Conclusion 14

Authority's own measures

(a) Acceptable to the G.77.

(b) (i) (ii) (iii) Acceptable to the G.77.

(c) (i) (ii) (iii) (iv) Acceptable to the G.77.

Note: The reasons as advanced on Provisional conclusion 11 apply to this provisional conclusion as well.

Provisional conclusion 15

Acceptable to the G.77

Note: The provisional conclusion could be merged with provisional conclusions 3 and 4.

Provisional conclusion 16

(a) The G.77 has no difficulty.

(b) The G.77 has no problem.

Note: The G.77 has no particular difficulty with the wording in this provisional conclusion subject to the discussions to be conducted in the *Ad Hoc* Working Group. The wording conforms with the Convention.

Provisional conclusion 17

The G.77 will await the availability of the expected paper by the Secretariat before commenting on this issue.

General Note

The G.77 has no difficulty in supporting the idea of providing an annex to CRP.16/Rev.1, which will contain a list of data to be collected and studied by the Authority, and not by international organizations, because, as stated on several occasions in this position paper, the primary obligation is on the Authority to collect and undertake studies on the minerals world market situation, and not on the existing international organizations.

Despite such an annex, however, provisional conclusions 6 and 8, as stated earlier, will still be necessary as they provide terms of reference for such studies as shall be necessary.

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LOS/PCN/SCN.1/1992/CRP.22
20 August 1992

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PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEABED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 1
New York, 10-21 August 1992

DRAFT PROVISIONAL REPORT OF SPECIAL COMMISSION 1

I. Introduction

1. Background. While establishing an international régime for the newly-defined maritime zone, the Area, i.e., "the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction" (Convention, article 1 (1)), the 1982 United Nations Convention on the Law of the Sea dealt with a number of related issues, one of them being "the protection of developing countries from adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected mineral, or in the volume of exports of that mineral, to the extent that such reduction is caused by actvities in the Area, ..." i.e., "all activities of exploration for, and exploitation of, the resources of the Area" (Convention, articles 150(h) and 1(3)).

2. Mandate of the Special Commission. In the above context, pursuant to paragraphs 9 and 5(i) of Resolution I of the Third United Nations Conference on the Law of the Sea, the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea, during its resumed first session in Summer 1983, established Special Commission 1, with the mandate of "undertak[ing] studies on the problems which would be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the Area with a view to minimizing their difficulties and helping them to make the necessary economic adjustment, including studies on the establishment of a compensation fund, and submit[ting] recommendations to the (International Seabed) Authority thereon" (Resolution I, paragraph 5(i)).

3. Programme of work. The Special Commission started its work in Spring 1984 during the second session of the Preparatory Commission, under the chairmanship of H.E. Dr. Hasjim Djalal (Indonesia), and with the cooperation of its Vice-Chairmen comprising of representatives of Austria, Cuba, Romania and Zambia. With respect to the programme of work to fulfil its mandate, as has been pointed out, "in studying the problems of developing land-based producer States, it is necessary to know, first, which minerals would be produced from sea-bed sources; second, how the introduction of the minerals from this new source would affect the existing land-based sources; third, what would these effects be and which developing States would be affected; fourth, what problems or difficulties, in connection with these effects, these

developing States would encounter; and finally, what could be done to minimize these difficulties" (LOS/PCN/L.2, paragraph 2). This logically structured framework is reflected in the programme of work adopted by the Special Commission at its first meeting (contained in LOS/PCN/SCN.1/1984/CRP.2), which listed five subject areas corresponding to the five areas of studies in the statement above. A list of specific issues falling under each of the five subject areas were then identified in CRP.3, which constituted the detailed programme of work of the Special Commission. It was also the understanding of the Special Commission that "the recommendations (to the Authority) will be the end results of its work (on these subject areas)" (ibid).

4. The subject areas listed in CRP.2 and CRP.3 are: (i) projection of future production from the international seabed Area; (ii) relationship between production from the Area and existing land-based production; (iii) identification, definition and measurement of effects of seabed production on developing land-based producer States; (iv) determination of the problems/difficulties that would be encountered by the affected developing land-based producer States; (v) formulation of measures to minimize problems/difficulties of affected land-based producer States.

5. In the course of discussion, the interrelationships among the five subject areas became quite obvious, especially those among (ii), (iii) and (iv). The needs for the relevant data and information were also recognized, and discussed on a number of occasions. Thus, deliberations in many instances were carried out by addressing the subject areas in an interrelated manner. However, for the purpose of a systematic presentation, a relatively distinct division can be made among the following areas:

A. Projection of future production from the international seabed Area;

B. Relationship between production from the Area and existing land-based production; Identification, definition and measurement of effects of seabed production on developing land-based producer States; Determination of the problems/difficulties that would be encountered by the affected developing land-based producer States;

C. Formulation of measures to minimize problems/difficulties of affected developing land-based producer States;

D. Data and information needs.

6. Organs and meetings. In the implementation of its programme of work, the Special Commission held a total of 121 formal meetings, and an additional 22 meetings with full facilities. Its Bureau held 35 open-ended meetings (open to all members of the Special Commission).

7. During the sixth session of the Preparatory Commission, in Spring 1988, the Special Commission established an Ad Hoc Working Group (open to all members of the Special Commission) to deal with certain 'hard core' issues, i.e. criteria for the identification of developing land-based producer States likely to be or actually affected by seabed production, assistance measures, including system of compensation/compensation fund, for developing land-based producer States, and effects of subsidized seabed mining. This Group started its work during the resumed sixth session in Summer 1988, under the chairmanship of H.E. Mr. Karl Wolf (Austria), and was later chaired by Mr. Luis G. Preval Paez (Cuba); it held 32 meetings, sharing meeting time and facilities with the Special Commission.

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8. During the seventh session of the Preparatory Commission in Spring 1989, the whole range of provisional conclusions of the deliberations of the Special Commission were drawn up by the Chairman (contained in CRP.16), which can form the basis of its recommendations to be submitted to the Authority, as per its mandate. These provisional conclusions were revised by the Chairman (CRP.16/Rev.1), as a result of discussions in the Special Commission. In the course of discussing the revised conclusions during the ninth session in Spring 1991, a 14-member Chairman's Negotiating Group was established by the Special Commission to negotiate, on an ad referendum basis, the provisional conclusions and thereby the recommendations. Various regional groups and interest groups were represented in the Negotiating Group. The members of the Negotiating Group were: Algeria, Australia, Canada, Chile, China, Cuba, European Economic Community, Japan, Philippines, Poland, Uganda, Union of Soviet Socialist Republics (later Russian Federation), and Zambia, without prejudice to any member of the Commission presenting its case. This group held 16 meetings.

II. Completion of consideration of all items under the programme of work

9. The Special Commission completed the consideration of all the items included in its detailed programme of work (CRP.3). The consideration of an item, in most cases, started with a discussion of a background paper on that item prepared by the Secretariat. In addition, in certain cases, consideration of an item was facilitated by presentations by experts from relevant organizations invited by the Special Commission (for example, World Bank, International Monetary Fund, United Nations Conference on Trade and Development, European Communities, Regional Conference on the Development and Utilization of Minerals in Africa, Permanent Commission for South Pacific). The conclusions from such consideration were then negotiated, in a preliminary manner, often based on initial suggestions forwarded by the Chairman, and then incorporated in the comprehensive set of provisional conclusions.

10. The mandate of Special Commission 1 is of a somewhat different nature from that of the other organs of the Preparatory Commission in that it involves undertaking studies which would focus essentially on the potential impact of future seabed mining on the land-based production of the relevant minerals in developing countries, and making recommendations on the basis of the findings of such studies, rather than procedural preparation for the commencement of functions of institutions. The work of the Special Commission was, thus, of a highly technical nature involving the utilization of data and information, research and analysis, studies and assessments. The documentation of the Special Commission which is a record of its work constitutes, therefore, an extremely useful reference and source material for the Authority. For this purpose, inter alia, the documentation of the Special Commission will be attached to this report as an Addendum.

11. Consideration of all the items, at a general level, started initially with the discussion of a lead-off background paper (LOS/PCN/SCN.1/WP.1). The Special Commission then discussed the minerals that may be produced from seabed sources, the metals that may be extracted from these minerals, the current market situation and future prospects for these metals from land-based sources, the possible impact of the introduction of metals from seabed sources into the markets, the importance of recycling and substitution in the metal markets, the importance of bilateral trade, and the developing countries that are producing these metals from land-based sources (WP.2 and Adds.1-7, WP.13). The Special Commission then considered the item of identifying land-based producer States likely to be affected by future seabed production (background papers WP.3 and WP.6, and suggestions of the Chairman of the Special Commission and of the Chairman of the Ad Hoc Working Group contained in CRP.8, CRP.18 and Revs.1-4). The Special Commission considered the item of measuring effects of future seabed production and problems that may be encountered by developing land-based producer States concommittant with those effects

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(background papers WP.4 and WP.7, and Chairman's suggestions in CRP.19 and CRP.14). The issue of projection of demand, supply and price of the metals that may be produced from seabed sources was also discussed (WP.15).

12. The Special Commission then considered the item of assistance measures for developing land-based producer States affected by seabed production. There was a large number of documents -- background papers on existing measures of organizations, global, interregional, regional and subregional, intergovernmental and non-governmental (WP.5 and Adds. 1-4); Chairman's summary regarding relevance of these existing measures for developing land-based producer States (CRP.10 and Add.1); background papers on system of compensation/compensation fund (WP.9, WP.10 and WP.12); background paper on commodity agreements (WP.14); various proposals by delegations (by Pakistan in CRP.6 and CRP.17; by Zimbabwe in CRP.7; by the group of Eastern European Socialist countries in WP.8; by European Economic Community and its Member States in CRP.11, CRP.20 and Rev.1; by the Group of 77 in CRP.12 and CRP.21; and by Australia in CRP.15); and suggestions by the Chairman of the Ad Hoc Working Group (CRP.19 and Revs.1-3).

13. Finally, the Special Commission considered the item of its recommendations to the Authority (CRP.16 and Rev.1), and also carried out negotiations in the Chairman's Negotiating Group on the provisional conclusions contained in CRP.16/Rev.1 which will form the basis of its recommendations to the Authority.

14. In all, the Special Commission completed consideration of 15 working papers (WP) with 11 addenda, and 21 conference room papers (CRP) with 3 addenda and 8 revisions. At the end of each session of the Preparatory Commission, the Chairman of the Special Commission reported to the Plenary on the progress of work during that session. These progress reports, taken together in their chronological order, represent the most authentic sources for assessing the status of work of the Special Commission. The Special Commission also undertook stock-taking exercises periodically (reflected in WP.11, CRP.5 and CRP.13 and in Part II of LOS/PCN/L.103). The progress reports and the stock-taking reports contain the most objective summaries of the deliberations in the Special Commission. They also present the main elements of the views of various delegations on different issues. Appendix I of this report presents a list of the statements of the Chairman to the Plenary, and of the working papers and the conference rooms papers considered by the Special Commission.

III. Outcomes of deliberations: Draft provisional recommendations resulting from the deliberations of Special Commission 1, which can be submitted to the International Seabed Authority

15. The end results of the deliberations of the Special Commission constitute the draft provisional recommendations on the matters mandated to it, which can be submitted to the Authority, and are annexed to this report.

16. In view of the uncertainties, which in recent years have become increasingly wide-ranging, with regard to when and to what extent seabed mining would occur in the future, the mandate of the Special Commission took on an additional dimension. In fact, in view of these uncertainties, the Special Commission was repeatedly cautioned about making any recommendations of a fixed nature. Very early in the deliberations in the Special Commission, a better understanding was achieved about the nature and content of the recommendations to be made to the Authority in view of the relatively long period that may be required before seabed production occurs (see LOS/PCN/L.18).

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17. In almost all of the issues falling under the purview of the Special Commission, there were different views of various groups of delegations, initially. At the end, compromises have been achieved on a large number of issues; however, some issues, including a few critical ones, remained unresolved, although there was a general feeling among delegations that with respect to a number of these issues, compromises were close at hand. The draft provisional recommendations annexed to this report include portions marked with square brackets which constitute the areas where compromises could not be reached, at the time of the writing of this report. (It should be noted that the identification of portions to be marked with square brackets could not be completed at the time of the writing of the report. Further review is needed for this purpose.)

18. The initial positions of delegations on each issue, the compromise-seeking efforts, the nature and content of the resolutions and near-resolutions achieved at the end in a large number of cases, and the divergent positions of delegations on the issues that remained unresolved at the time of writing this report, are more fully described in the statements of the Chairman of the Special Commission to the Plenary of the Preparatory Commission, mentioned above. This report presents brief summaries in the following.

A. Projection of future production from the international seabed Area

19. Issues resolved. Given the lack of certainty as to which minerals would be produced from the seabed in the future and which metals would be extracted from those minerals, one view was that in connection with assisting developing land-based producer States the Authority should concern itself with all possible minerals that could be exploited from the seabed, while the opposing view was to focus on polymetallic nodules alone since these minerals appear to be the likeliest to be exploited first. It was agreed that

- The Authority should concentrate its work on polymetallic nodules, including the projected timing of commercial production from the Area. It should also keep in view the trends and developments regarding seabed minerals other than polymetallic nodules, for example, polymetallic sulfides, cobalt-rich crusts, etc.

- The Authority should concentrate its work on copper, nickel, cobalt and manganese to be extracted from polymetallic nodules. It should also keep in view the trends and developments regarding the other metals contained in polymetallic nodules.

20. It was also agreed that

- The Authority should keep abreast of the forecasts of the mineral situation with and without seabed production in the future.

21. Issues close to resolution. With respect to the forecasts of the mineral situation, while one view was that the Authority should carry out forecasting on its own, another view was to rely on existing forecasts alone for the sake of cost-effectiveness. The resolution of this issue is close at hand, along the following lines:

- The Authority should use existing forecasts as far as practicable, and will carry out forecasting only when no existing forecasts serve its purpose.

B. Relationship between production from the Area and existing land-based production; Identification, definition, and measurement of effects of seabed production on developing land-based producer States; Determination of the problems/difficulties that would be encountered by the affected developing land-based producer States

22. Issues resolved. Taking into account the fact that seabed mining will only occur in the future, perhaps more than a decade away, it was agreed that

- At this time the Authority cannot study the above matters with any reasonable degree of precision and accuracy, and therefore, the Authority should focus on pertinent data, information and analysis, and on the projected timing of commercial production from the international seabed Area.

23. It was also agreed that

- The best way to assist developing land-based producer States would be to examine the situation on a case-by-case basis.
- In this context, the process can start with the submission of applications for assistance by developing land-based producer States likely to suffer adverse effects from future seabed production, in the cases where the applications are submitted prior to the commencement of commercial production from the seabed, and by developing land-based producer States which consider themselves adversely affected by seabed production, in the cases where the applications are submitted after the commencement of commercial production from the seabed.

24. Once such applications are submitted, one view was that the applicants should be assisted on a more or less automatic basis, while an opposing view was held that the really deserving applicants can best be helped only after a determination has been made to that effect. It was then agreed that

- The applications have to substantiate the potential or actual effects, as the case may be, of seabed production; certain criteria should be applied in processing the applications; and most importantly, an in-depth investigation, on a case-by-case basis, should be carried out to assess the relationship between seabed production and land-based production by the applicant, to quantify the effects of seabed production on the export earnings or economy of the applicant, to investigate the problems encountered by the applicant directly linked with the effects, in order to determine what measures would assist the applicant best.
- In this connection the contents of applications, timing and procedures for submission of applications, procedures for processing applications including criteria to determine whether in-depth investigations would be initiated, were agreed upon. An outline of the said in-depth investigation was also agreed upon.

25. Issues close to resolution. In processing the applications, including carrying out the in-depth investigations on a case-by-case basis, the role of the Authority was extensively debated. One group of delegations maintained that existing organizations assisting developing countries and also active in the mineral sector have the requisite resources, expertise, and

infrastructures to deal with similar problems, and it is these organizations which should process the applications. The opposing position was that it was the responsibility of the Authority, in particular the Economic Planning Commission, to process the applications. The resolution of this issue is close at hand along the following lines:

- Some kind of cooperative efforts between the Authority and the existing organizations, with the desirable mix of respective roles, can be devised.

26. While it was agreed that certain criteria based on the degree of dependency of the applicant on the four metals concerned (dependency threshold) and on the level of potential or actual effects of seabed production, as the case may be, on the export earnings or economy of the applicant (trigger threshold), and in the cases of applicants with special problems, based on certain safeguard clauses, would be applied in processing the applications, opposing views were held regarding the formulation of the safeguard clause with regard to trigger threshold. One view was to make the safeguard clause restrictive enough so that the Authority is not overwhelmed with too many applications. Another view was to have a fairly lenient safeguard clause so that applicants are not screened out right at the outset. In the spirit of compromise, a number of alternative safeguard clauses have been suggested by the opposing groups. A resolution along the following lines is close:

- A safeguard clause with regard to trigger threshold, with acceptable degrees of restrictiveness and leniency can be devised.

C. Formulation of measures to minimize problems/difficulties of affected developing land-based producer States

27. Issues resolved. This was the item which was most extensively debated in the Special Commission. Intensive negotiations over the past few sessions have led to the resolution of a number of issues, as follows:

- Any specific measures or combination of measures that would assist developing land-based producer States, can be taken.

- Adequate resources for implementing the measures are expected to be available.

- There are possibilities that the Authority itself may have some resources to contribute to the implementation of measures.

- Assistance to developing land-based producer States should be for the purpose of dealing with changed economic circumstances after seabed production, including economic adjustment, diversification, increased efficiency and productivity in the mineral sector, promotion of growth in other sectors.

- Assistance should be implemented and administered efficiently and in the most cost-effective manner.

28. Unresolved issues. The outstanding issues in which the positions of the various delegations appear to be the hardest to reconcile pertain to the nature and extent of assistance to be provided by the Authority itself to developing land-based producer States and the role that the Authority would have in deciding upon and implementing the assistance measures. Two fundamentally opposing positions were held by the EEC and its Member States, on the one hand, and the Group of 77, on the other.

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29. As has been stated by the Chairman of the Special Commission: "In my view, the thrust of the position of the EEC and its Member States is that assistance to be provided to developing land-based producer States actually suffering or likely to suffer adverse effects from seabed production would take the form of economic adjustment assistance alone, and that the requisite measures would be decided upon and implemented by international and/or multilateral organizations, with the Authority having a catalyst's role. The thrust of the position of the Group of 77, in my view, is that the creation of a compensation fund by the Authority for the purpose of assisting [developing land-based producer States] is a valid and specified option the modalities of which should be discussed and analyzed, and that whatever measure(s) of assistance is considered -- Authority's own measure of compensation or economic adjustment, bilateral measures, existing economic measures of international or multilateral organizations, commodity agreements, anti-subsidy measures, or any combination thereof -- the primary responsibility of deciding upon and implementing the requisite measure(s) lies in the Authority as the 'custodian' of the common heritage of mankind under the Convention." (LOS/PCN/L.88, paragraph 5)

30. Elaborating on its position, "the EEC stated that the overall concern of the EEC and its Member States was to achieve a cost effective use of resources and that the Authority should, therefore, not duplicate the work of international or multilateral organizations which already provide assistance to developing States in the framework of their respective programmes. In their view, the Authority should act as a catalyst and bring together the relevant organizations." (LOS/PCN/L.88, paragraph 7)

31. On the other hand, "the Group of 77 totally rejected attempts by the EEC to shift the primary responsibility of providing assistance [to developing land-based producer States] from the Authority to the other international and multilateral organizations. The Group stated that the proposal by the EEC that requests for assistance should be directed by the Authority to other organizations with the purpose of studies to be carried out, measures to be taken, and assistance to be provided by the latter, was not only unacceptable to the Group but clearly would not work. According to the Group, the international or multilateral organizations might not have legal obligations, mandates or budgetary provisions to carry out such studies, take such measures or provide assistance, and that it was not indicated in the EEC proposal how the Authority would ensure that these matters would be taken care of." (LOS/PCN/L.88, paragraph 36.)

32. In the above context, the specific unresolved issues in Special Commission 1 are the following:

- Whether a s tem of compensation of the Authority and the related compensation fund should be included among the measures;
- Whether the Authority would be in a position to contribute to the financing of measures for assistance to developing land-based producer States likely to suffer adverse effects from seabed production, when such assistance would be provided prior to the commencement of commercial production from the Area;
- What should be the role of the Authority in implementing and administering the assistance, in the cases when it is the measures of other organizations that are being applied.

D. Data and information needs

30. Issues resolved. While there were some divergences of views between one group of delegations which maintained that the data and information needs of the Authority should cover a wide range of items and another group which

maintained that the Authority should focus on a set of items that are directly related to assistance to developing land-based producer States, the issue was ultimately resolved

- by including the categories of data and information and the specific items under the respective categories that are directly related and useful for the purpose of assisting developing land-based producer States.

34. It was also agreed that

- The Authority, at the time when seabed mining becomes imminent or operational, would be in a better position to review the requisite categories, specific items under respective categories, and the degree of detail, and decide thereupon.

35. In view of the widespread availability of many pertinent data and information, the manner in which the Authority should utilize, collect and maintain data and information was also agreed upon. In this connection, it was agreed that

- The Authority should develop and maintain cost-effective databases; in developing and maintaining such databases, the Authority has priority to use data and information collected and stored by relevant organizations. The Authority itself shall only collect such data and information which are not collected by other organizations.

IV. Concluding observations

36. Special Commission 1 expended its efforts to the utmost to fulfil the responsibilities mandated ot it. In undertaking the studies entrusted to it, most of which were of a highly technical nature, the Special Commission was systematic, objective and incisive. In deciding upon the recommendations to be submitted to the Authority, members of the Special Commission elevated the spirit of compromise to the highest degree possible. Whatever disagreement there remains on details or specific issues, at the time of writing this report, the fundamental issue was agreed upon universally and unanimously that developing land-based producer States, if they are likely to be or actually affected by seabed production in the future, shall be assisted. The Special Commission conveys its best wishes to the future International Seabed Authority in the discharge of its duties and responsibilities in this area.

37. In conclusion, the Special Commission would like to put on record its deepest appreciation for the unvarying, competent and impartial leadership provided by its Chairman, H.E. Dr. Hasjim Djalal (Indonesia), over the entire long span of its effective functioning. The Special Commission also expresses appreciation for the untiring and solution-seeking efforts of the successive Chairmen of the Ad Hoc Working Group, H.E. Mr. Karl Wolf (Austria) and Mr. Luis G. Preval Paez (Cuba). The Special Commission thanks the members of the Bureau for their guidance. The Special Commission is deeply grateful to its members without whose contributions, technical and political, its accomplishments would not be possible. The guidance provided at the outset by the first Chairman of the Preparatory Commission, H.E. Mr. Joseph Warioba (United Republic of Tanzania) is duly appreciated; the culmination of the Special Commission's work in the present draft provisional report was possible solely due to the unique leadership of the present Chairman, H.E. Mr. Jose Luis Jesus (Cape Verde). The Special Commission would also like to record its thanks for the information, advice, assistance and services provided by the United Nations Secretariat.

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ANNEX

DRAFT PROVISIONAL RECOMMENDATIONS RESULTING FROM THE DELIBERATIONS OF SPECIAL COMMISSION 1, WHICH CAN BE SUBMITTED TO THE INTERNATIONAL SEABED AUTHORITY

INTRODUCTION

Resolution I, paragraph 5(i) has mandated the Preparatory Commission to undertake studies on the problems which would be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the international seabed Area with a view to minimizing their difficulties and helping them to make the necessary economic adjustment, including studies on the establishment of a compensation fund, and submit recommendations to the International Seabed Authority thereon.

DRAFT PROVISIONAL RECOMMENDATIONS

CHAPEAU

In carrying out its mandate, including conducting any studies or assessments and establishing any databases, the Authority has to make use of pertinent data, information, analysis, studies and forecasts available from national, subregional, regional, interregional or global organizations, intergovernmental or non-governmental, public or private and conduct such studies or assessments and establish such databases in the most cost-effective manner and to the utmost degree possible, in cooperation with, and obtaining support from, the relevant organizations.

Section 1. PROJECTION OF PRODUCTION FROM THE AREA

Draft provisional recommendation 1

Minerals of the Area and metals contained in those minerals

(a) The Authority should concentrate its work on polymetallic nodules, including the projected timing of commercial production from the Area. It should also keep in view the trends and developments regarding seabed minerals other than polymetallic nodules, for example, polymetallic sulphides, cobalt-rich crusts, etc.

(b) The Authority should concentrate its work on copper, nickel, cobalt and manganese to be extracted from polymetallic nodules. It should also keep in view the trends and developments regarding the other metals contained in polymetallic nodules.

Draft provisional recommendation 2

Forecast of mineral situation with or without seabed production

The Authority should collect available data and information on future seabed mining activities in the Area as well as existing forecasts on mineral situation. The Authority should consider and comment upon those forecasts when it has approved the first plan of work for exploitation. If necessary, the Authority could carry out its own forecasting, based on the available data, information, and the existing forecasts on the mineral situation with and without seabed production, which would include, *inter alia*, supply-demand-price of the four metals concerned, in accordance with the provisions of the chapeau.

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Section 2. APPLICATIONS BY DEVELOPING LAND-BASED PRODUCER STATES AND CONSIDERATION OF APPLICATIONS

Draft provisional recommendation 3

Applications by developing land-based producer States likely to suffer adverse effects from seabed production

(a) Before the commencement of commercial production from the Area, a developing land-based producer State which considers itself likely to suffer adverse effects from future seabed production could submit an application for assistance to the appropriate organ of the Authority, through the Secretary-General, in accordance with articles 164 (2) (c) and 151 (10) of the Convention.

(b) In the application, the developing State in question should, *inter alia:*

(i) identify that it is a developing land-based producer State by providing statistics on its production, volume of exports and export earnings from one or more of the four metals concerned for the last five years, as available;

(ii) present projections of its production, volume of exports and export earnings from one or more of the four metals concerned, in a situation where seabed production does not occur;

(iii) present the same projections of the above variables, in a situation where seabed production occurs;

(iv) make every effort to propose measures, including economic adjustment measures, which are necessary to alleviate its problems and to adapt its economy to the changing circumstances;

(v) present such other data and information as might be required by the Authority.

(c) The Authority, if requested by the developing State in question, should provide technical assistance in analyzing and processing data and information required under (b) above.

(d) Such applications may be submitted at any time after the first submission of a plan of work for exploitation.

(e) Having received the application, the appropriate organ of the Authority shall determine whether sufficient evidence exists to carry out an in-depth investigation by applying the criteria specified in draft provisional recommendation 5 below.

(f) If the appropriate organ of the Authority determines that an in-depth investigation needs to be carried out, the Authority shall, in the first instance, consult the relevant global, interregional, regional and subregional organizations, which might provide assistance, as to the most appropriate manner such an investigation shall be undertaken. (For a list of the relevant

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organizations, see Annex B below.) After the consultations, the investigation shall be undertaken along the lines suggested in Annex C below.

(g) The most appropriate manner in undertaking the in-depth investigation may include: (i) investigation to be undertaken by relevant organizations themselves or in cooperation with the Authority; (ii) investigation to be undertaken by the Authority itself or in cooperation with the relevant organizations; (iii) investigation to be commissioned by the Authority.

(h) The investigation shall also study the necessary measures and the assistance that could be provided by the Authority by the relevant organizations, and by the traditional importing States of the relevant metals from the developing State in question.

Draft provisional recommendation 4

Applications by developing land-based producer States which consider themselves adversely affected by seabed production

(a) After the commencement of commercial production from the Area, a developing land-based producer State which considers itself affected by seabed production could submit an application for remedial measures to the appropriate organ of the Authority, through the Secretary-General, in accordance with articles 164 (2)(d) and 151 (10) of the Convention.

(b) In the application, the developing State in question should, *inter alia:*

(i) identify that it is a developing land-based producer State by providing statistics on production, volume of exports and export earnings of one or more of the four metals concerned for the last five years, as available;

(ii) identify the changes that it considers occurred because of seabed production: decrease in price, decrease in volume of exports, decrease in export earnings, other effects on its economy, i.e., decrease in GDP or GNP, decrease in rate of growth of GDP or GNP, decrease in level of employment, decrease in foreign exchange reserves;

(iii) indicate why or how it considers that the above effects have been brought about by seabed production and not as a result of other factors;

(iv) make every effort to propose measures, including economic adjustment measures, which are necessary to alleviate its problems and to adapt its economy to the changing circumstances;

(v) present such other data and information as might be required by the Authority.

(c) The Authority, if requested by the developing State in question, should provide technical assistance in analyzing and processing data and information required under (b) above.

(d) Having received the application, the appropriate organ of the Authority shall determine whether sufficient evidence exists to carry out an in-depth investigation by applying the criteria specified in draft provisional recommendation 5 below.

(e) If the appropriate organ of the Authority determines that an in-depth investigation needs to be carried out, the Authority shall, in the first place, consult the relevant global, interregional, regional and subregional organizations, which might provide assistance, as to the most appropriate manner such an investigation shall be undertaken. (For a list of the relevant organizations, see Annex B below.) After the consultations, the investigation shall be undertaken along the lines suggested in Annex C below.

(f) The most appropriate manner in undertaking the in-depth investigation may include: (i) investigation to be undertaken by relevant organizations themselves or in cooperation with the Authority; (ii) investigation to be undertaken by the Authority itself or in cooperation with the relevant organizations; (iii) investigation to be commissioned by the Authority.

(g) The investigation shall also study the necessary measures and the assistance that could be provided by the Authority, by the relevant organizations, and by the traditional importing States of the relevant metals from the developing State in question.

Draft provisional recommendation 5

Criteria for undertaking the in-depth investigation with a view to determining appropriate measures

(This draft provisional recommendation incorporates the final outcomes of the deliberations in the Ad Hoc Working Group, as contained in document LOS/PCN/SCN.1/1992/CRP.18/Rev.4.)

The criteria mentioned in draft provisional recommendations 3(e) and 4(d) above should be as follows:

(a) The Authority should use the idea of dependency thresholds for the purpose of determining the importance to a developing land-based producer State of, or its dependence on, copper, nickel, cobalt and manganese for its export earnings or for its economy. With regard to the dependency thresholds, the Authority should be guided by the following:

(i) During the relevant period when applications by developing land-based producer States are submitted, either before the commencement of commercial production from the Area or after, those developing land-based producer States which earn 10 per cent or more of their total export earnings per year from the export of one or more of the four metals--copper, nickel, cobalt and manganese--shall be categorized as "dependent";

(ii) If the applications are submitted before the commencement of commercial production from the Area, in the cases of certain developing land-based producer States which can demonstrate that they are likely to encounter special problems resulting from seabed production, and if the applications are submitted after the commencement of commercial production from the Area, in the cases of certain developing land-based producer States which can demonstrate that they actually encounter special problems resulting from seabed production, although their export earnings from the export of one or more of the four metals concerned, may not account for the specified percentage of their total export earnings, as above, the Authority shall determine, on a case-by-case basis, [taking into account all relevant factors,] [taking into account particularly the effects of such problems on their economy and social development,] whether they can be categorized as "dependent" or not;

(iii) In calculating the percentage of total export earnings of a particular developing land-based producer State from the export of one or more of the four metals concerned, an average shall be used over a three-year period before the year of application by that developing land-based producer State.

(b) If the dependency thresholds are exceeded, then the Authority shall determine whether the effects that are considered to result potentially from seabed production, in the cases of applicants referred to in draft provisional recommendation 3 above, and the effects mentioned in the applications, in the cases of applicants referred to in draft provisional recommendation 4 above, exceed any of the levels specified below (referred to as the trigger thresholds).

(i) In the cases of developing land-based producer States whose applications are submitted after the commencement of commercial production from the Area, the actual fall in the export earnings of a particular developing land-based producer State from the export of one or more of the four metals concerned, the situation where there is seabed production, has to be at least 10 per cent in comparison with the situation where there is no seabed production;

(ii) In the cases of developing land-based producer States whose applications are submitted before the commencement of commercial production from the Area, the estimated fall in the export earnings of a particular developing land-based producer State from the export of one or more of the four metals concerned, that is likely to result in the situation where there is seabed production, has to be at least 10 per cent in comparison with the situation where there is no seabed production.

[(iii) If the actual or estimated fall in export earnings of a particular developing land-based producer State from the export of one or more of the four metals concerned, is less than 10 per cent but more than 5 per cent in comparison with the situation where there is no seabed production, the Authority shall determine, on a case-by-case basis, taking into account the effects of such fall on its economy and social development, the necessary remedial measure or measures to help that particular developing land-based producer State.]

[(iii) In the cases of developing land-based producer States where the actual or estimated fall in export earnings from the export of one or more of the four metals concerned, is less than 10 per cent in comparison with the situation where there is no seabed production, but amounts to 2 per cent of the total export earnings (from all exported goods and services), the Authority shall determine, on a case-by-case basis, whether action would be triggered.]

[(c) Replace subparagraphs (a)(ii) and b(iii) by the following:

If the applications are submitted before the commencement of commercial production from the Area, in the cases of certain developing land-based producer States which can demonstrate that they are likely to encounter special problems resulting from seabed production, and if the applications are submitted after the commencement of commercial production from the Area, in the cases of certain developing land-based producer States which can demonstrate that they actually encounter special problems resulting from seabed production, although their export earnings from the export of one or more of the four metals concerned, may not account for the specified percentage of their total export earnings, as above, or although the estimated or actual fall, as the case may be, in their export earnings from the export of one or more of the four metals concerned, may not account for the specified percentage, as above, in comparison with the situation where there is no seabed production, the Authority shall determine, on a case-by-case basis, taking into account all relevant factors, bearing in mind considerations of cost effectiveness and its work efficiency, whether an in-depth investigation needs to be carried out.]

(d) The Authority should consider lowering the figures with respect to dependency thresholds and trigger thresholds taking into account certain factors: production capabilities of a particular developing land-based producer State for one or more of the four metals; projected future production; reserves; GNP and per capita income; population; size of area of a particular developing land-based producer State; and geographical location of a particular developing land-based

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State. With regard to the lowering of the figures the Authority should be guided by the following:

In the cases of the "least developed" among the developing land-based producer States, identified in the relevant United Nations documents, the dependency thresholds and the trigger thresholds shall be reduced by 33 per cent.

(e) Without prejudice to its right to determine other figures, taking into account the prevailing condition or situation at a certain time, the Authority shall apply the figures indicated above.

Section 3. MEASURES TO ASSIST DEVELOPING LAND-BASED PRODUCER STATES

Draft provisional recommendation 6

Assistance to developing land-based producer States likely to suffer adverse effects from seabed production

In reference to draft provisional recommendation 3(h) above, in accordance with article 150(h) of the Convention, the necessary and appropriate measures should be considered, to provide protection to developing land-based producer States from the adverse effects of seabed production, priority being accorded to developing land-based producer States likely to be most seriously affected, with a view to minimizing their difficulties and helping them to make the necessary economic adjustment.

Draft provisional recommendation 7

Assistance to developing land-based producer States which suffer serious adverse effects from seabed production

In reference to draft provisional recommendation 4(g) above, in accordance with article[s] 150 (h) [and 151(10)] of the Convention, the necessary and appropriate measures, [including economic adjustment assistance measures, and as situation warrants, possible compensation measures,] should be considered, to assist developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected metal, or in the volume of exports of that metal, to the extent that such reduction is caused by activities in the Area.

Draft provisional recommendation 8

Existing economic measures

For the purpose of draft provisional recommendations 6 and 7 above, with regard to existing economic measures:

(a) The Authority, in accordance with article 151(10) of the Convention, should cooperate with United Nations, specialized agencies and other international organizations, as well as with other global, interregional, regional and subregional organizations, to provide assistance to developing land-based producer States in question;.

(b) The Authority should assess all of the existing measures, programmes and activities of the United Nations, specialized agencies, and other international organizations as well as other organizations at the global, interregional, regional and subregional levels in order to determine how to put them in use for the implementation of provisional recommendations 6 and 7 above;

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(c) The Authority should learn from the experiences of the relevant organizations with regard to economic measures that could be of relevance for its purpose;

(d) The Authority should make appropriate cooperative arrangements with the relevant organizations for the purpose of formulating practical modalities in relation to draft provisional recommendations 6 and 7 above.

(e) The Authority should encourage developing land-based producer States to make use of available assistance measures currently being implemented by the United Nations, specialized agencies and other international organizations as well as other global, interregional, regional and subregional organizations, both intergovernmental and non-governmental, for their purposes.

Draft provisional recommendation 9

Measures involving traditional importing States

(This draft provisional recommendation may be modified or deleted, subject to the consultations with its original sponsors.)

For the purpose of draft provisional recommendations 6 and 7 above, with regard to measures involving traditional importing States:

The Authority could encourage agreements between a developing traditional exporter State of the affected metal and a State producing a similar metal from the resources of the Area which traditionally used to import that metal from the former. Such agreements would include measures to assist the developing State in question to overcome difficulties which may arise from a reduction in its export earnings as a result of seabed production by the latter. If such agreements are concluded, the Authority should be informed of them.

Draft provisional recommendation 10

Authority's own measures

(This draft provisional recommendation incorporates the final outcomes of the deliberations in the Ad Hoc Working Group, as contained in document LOS/PCN/SCN.1/1992/CRP.19/Rev.3.)

For the purpose of draft provisional recommendation[s] [6 and] 7 above, with regard to its own measures,

(a) The Authority could consider formulating a measure of its own [either an economic adjustment assistance measure or as situation warrants, a possible compensation measure] by creating a [special] fund;

(b) Such a fund could be financed from the following sources:

(i) A percentage of the revenues from the profits of the Enterprise;

(ii) A percentage of the revenues from the profits of other operators in the Area; and

(iii) Voluntary contributions made by members or other entities;

(c) Subject to criteria to be drawn up by the Authority, the fund would be used to help finance projects and/or programmes in affected developing land-based producer States with the potential to bring about economic adjustment and improve capability to counter adverse effects of activities in the Area. Such projects and/or programmes could be directed at areas that include: diversification of economies; possibilities of the establishment of viable downstream activities, nationally or regionally; improvement of efficiency and retraining of work force in the mining sector. The fund could also be used for the provision of technical assistance, and soft loans and/or grants, etc., as appropriate.

(d) [If such a measure as above is formulated, it would be established by the Assembly, upon the recommendation of the Council on the basis of advice from the Economic Planning Commission.]

Draft provisional recommendation 11

Measures against unfair economic practices

(a) Recognizing that the non-permissible subsidized exploitation of the resources of the Area is a factor likely to exacerbate adverse effects on developing land-based producer States, there should be no non-permissible subsidization or other unfair economic practices relating to the exploitation of the resources of the Area. Noting the relevance of article 151(8), the rights and obligations as defined in relevant multilateral trade agreements should apply to the exploitation of the resources of the Area.

(b) The Authority should establish rules, regulations and procedures for the effective implementation of paragraph (a). In doing so, it should ensure the application of the provisions relating to unfair economic practices of relevant multilateral trade agreements, including those relating to the settlement of disputes.

Draft provisional recommendation 12

International commodity agreements or arrangements

The Authority should keep abreast of the developments with regard to international commodity agreements or arrangements and, in due time, make further assessments, in the context of its own objectives, as to the feasibility and effectiveness of such agreements or arrangements.

Section 4. IMPLEMENTATION OF MEASURES TO ASSIST DEVELOPING LAND-BASED PRODUCER STATES

Draft provisional recommendation 13

Taking steps to implement the measures

(a) In the event, as a result of the in-depth investigation referred to in draft provisional recommendations 3(f) and (h) and 4(e) and (g) above, the Authority, the developing State in question, the relevant organizations as well as the traditional importing States, as the case may be, agree on the necessary measures and the assistance to be provided, steps should be taken to implement these in accordance with the normal procedures. The Secretary-General shall inform the Council on such agreement and steps.

(b) Should the agreement call for contribution of the Authority to the implementation of the necessary measures and the assistance to be provided, the Secretary-General shall submit relevant proposals to the Economic Planning Commission and the Finance Committee, which in turn shall submit their recommendations to the Council for final decision.

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Annex A

NECESSARY DATA AND INFORMATION

Draft provisional recommendation 1

Development and maintenance of databases

(a) The Authority needs data and information to implement the above provisional conclusions.

The Authority should, as far as practicable and in due time, develop and maintain cost-effective databases with respect to data and information that are necessary to implement the tasks assigned to it in the above provisional conclusions. In developing and maintaining such databases, the Authority has primarily to use data and information collected and stored by other national, subregional, regional, interregional or global organizations, intergovernmental or non-governmental, public or private. The Authority itself shall only collect data and information which are not collected by other organizations.

(b) The Authority should assess the requisite categories, degree of detail in each category, and accuracy and reliability of data and information at various time periods and use or collect data and information accordingly.

Draft provisional recommendation 2

Subject areas for data and information

For the purpose of discharging its responsibilities in the most efficient manner, the Authority should collect and maintain data and information in the following four subject areas: (a) seabed minerals; (b) metals and non-metallic elements contained in seabed minerals; (c) developing land-based producer States of metals contained in seabed minerals; and (d) existing economic measures of various organizations which could be of assistance to developing land-based producer States.

Draft provisional recommendation 3

Seabed minerals

With respect to the subject area of seabed minerals, referred to in draft provisional recommendation 2 above:

(a) The Authority should collect and maintain data and information on the trends and developments with regard to the economic exploitability of polymetallic nodules. It should also keep in view the trends and developments with regard to polymetallic sulfides, cobalt-rich crusts, and any other seabed minerals whose occurrence is known.

(b) The Authority should collect and maintain information and data on the following categories: (i) known occurrence in the various locations of the seabed categorized by latitudes and longitudes; (ii) estimates of abundance and metal content in each location, if available in the public domain; (iii) characteristics of micro-topography in each location, if available in the public domain; (iv) sediment characteristics in each location, if available in public domain; (v) water depths in each location, if available in public domain; (vi) estimates of reserves, potential reserves or resources in various areas of the seabed. Such information and data should also cover seabed minerals in maritime zones under national jurisdiction.

Draft provisional recommendation 4

Metals contained in polymetallic nodules

With regard to metals contained in polymetallic nodules, especially copper, nickel, cobalt and manganese:

(a) The Authority should collect and maintain data and information on the following categories, inter alia: (i) production, by country and world total; (ii) consumption or apparent consumption, by country and world total; (iii) exports, and re-exports, by products of various stages of processing, by country and world total; (iv) imports, by products of various stages of processing, by country and world total; (v) prices, by type of commodity in various terminal markets; (vi) production capacity, by country and world total; (vii) planned capacity expansion, by country and world total; (viii) planned new mine development by country and world total; stocks (producers' stocks, consumers' stocks, dealers' stocks), by country and world total; (ix) reserves, by country and world total; (x) resources, by country and world total (wherever applicable data and information should be on an annual basis starting from 1980 onwardsThe Authority should also collect and maintain data and information on costs of production from various deposits.

(b) The Authority should collect and maintain information and data on: (i) secondary production and recycling, including the trends and developments in the recent past and the current period as well as the possibilities in the medium-term future; (ii) substitution, including the trends and developments in the recent past and current period as well as the possibilities in the medium-term future.

(c) The Authority should also collect and maintain data and information on: (i) the extent of bilateral trade including quantities and values of traded commodities among various trading partners; (ii) the extent of barter trade including the specification of commodities exchanged in barter, and of the barter trade partners; (iii) bilateral trade agreements and their salient features; (vi) commodity agreements or agreements of a similar nature and their salient features; (v) commodity arrangements, study groups, etc. and their salient features.

Draft provisional recommendation 5

Developing land-based producer States

With regard to the developing land-based producer States of metals contained in polymetallic nodules:

(a) The Authority should collect and maintain information on the following categories, inter alia: (i) their production of the four metals concerned; (ii) their consumption of the four metals concerned; (iii) their exports of the four metals concerned; (iv) their imports of the four minerals concerned; (v) the prices they receive for their exports; (vi) their gross domestic product (GDP) and/or gross national product (GNP); (vii) their total exports of all goods and services; (viii) rate of growth of their GDP or GNP; (ix) their total employment in the economy;(x) their employment in the four metals industries concerned; (xi) their government revenues from the four metals concerned; (xii) the extent of their reserves of the four metals concerned; (xiii) the extent of their resources of the four metals concerned; (xiv) the estimated costs of production from their deposits; (xv) their trade agreements with trading partners and the salient features of these agreements; (xvi) the direction of their trade in the four metals concerned.

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(b) To the extent applicable, the Authority should utilize data under draft provisional recommendation 4 above for the purpose of this draft provisional recommendation.

Draft provisional recommendation 6

Making available data and information to State

The Authority should make available data and information to the States in appropriate forms, as requested.

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Annex B

INDICATIVE LIST OF RELEVANT ORGANIZATIONS REFERRED TO IN DRAFT PROVISIONAL RECOMMENDATIONS 3, 4 AND 8, INTER ALIA

I. United Nations, the specialized agencies and other international (global) organizations

1. United Nations Office of Legal Affairs (UN/OLA)
2. United Nations Department of Economic and Social Development (UN/DESD)
3. United Nations Development Programme (UNDP)
4. United Nations Conference on Trade and Development (UNCTAD)
5. United Nations Environment Programme (UNEP)
6. United Nations Institute for Training and Research (UNITAR)
7. United Nations University (UNU)

8. African Institute for Economic Development and Planning (IEDP)
9. UNCTAD/GATT/International Trade Center (ITC)

10. Economic Commission for Africa (ECA)
11. Economic and Social Commission for Asia and the Pacific (ESCAP)
12. Economic Commission for Latin America and the Caribbean (ECLAC)
13. Economic and Social Commission for Western Asia (ESCWA)
14. Economic Commission for Europe (ECE)

15. International Bank for Reconstruction and Development (IBRD), International Development Association (IDA), International Finance Corporation (IFC)
16. International Monetary Fund (IMF)
17. United Nations Industrial Development Organization (UNIDO)
18. General Agreement on Tariffs and Trade (GATT)
19. United Nations Educational, Scientific and Cultural Organization (UNESCO)
20. International Labour Organisation (ILO)

II. Regional development banks

21. African Development Bank (ADB)
22. Asian Development Bank (AsDB)
23. Inter-American Development Bank (IDB)

III. Intergovernmental organizations

24. European Communities (EC)
25. Organization for Economic Cooperation and Development (OECD)
26. Organization of African Unity (OAU)
27. Organization of American States (OAS)
28. Commonwealth Secretariat
29. International Copper Study Group (ICSG)
30. International Nickel Study Group (INSG)
31. Western African Economic Community
32. Association of South-East Asian Nations (ASEAN)
33. Asian-African Legal Consultative Committee (AALCC)
34. Permanent Commission for South Pacific
35. Andes Development Corporation
36. League of Arab States

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IV. Non-governmental organizations

37. International Council of Scientific Unions (ICSU)
38. International Ocean Institute (IOI)
39. International Institute for Applied Systems Analysis (IIASA)

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Annex C

INDICATIVE OUTLINE OF THE DATA TO BE COLLECTED AND STUDIES TO BE CARRIED OUT FOR AN IN-DEPTH INVESTIGATION REFERRED TO IN DRAFT PROVISIONAL RECOMMENDATIONS 3(f) AND 4(e)

(a) Identification of resources of the Area exploited, and the metals extracted from these resources, referred to in draft provisional recommendation 1 above.

(b) Forecast or estimation of volume of production of each metal from the Area, as the case may be, in cooperation with pioneer investors and other contractors, referred to, in part, in draft provisional recommendation 2 above.

(c) Assessment of the relationship between production from the Area and land-based production, within the context of the world supply-demand situation and the different world markets as wall as different trade practices; such assessment should indicate the short-term (less than 5 years), medium-term (5 to 20 years) and long-term (longer than 10 years) trends.

(d) Formulation of a methodology to establish to what extent effects on price or volume of exports of a metal of a developing land-based producer State can potentially result from or are caused by production of the metal from the Area. Such a methodology shall take into account: world metal market situation; change in consumption patterns; production from maritime zone under national jurisdiction; substitution; recycling; technological developments; other relevant factors, such as the general economic conditions, the government policies and the exhaustion of deposits within national jurisdiction of the developing land-based producer States concerned.

(e) Quantification of effects on exports.

(f) Quantification of effects on economies, taking into account the various factors such as

(i) Unemployment, to the extent that it is caused by or related to reduced production of the four metals;

(ii) Lack of development as a result of reduced government revenues from the four metals;

(iii) Side effects, such reduced production of accessory minerals as a result of the reduction in the production of the four metals;

(iv) Multiplier effects on the economy as a whole.

(g) Investigation of the problems directly linked with the effects, including assessment of capabilities and limitation of the affected State to counter or control the effect.

(h) When applications are made simultaneously, a study should be made in order to determine in what way the adverse effects of seabed production would cause more problems to certain developing land-based producer States as compared to other land-based producers, in order to establish a priority.

(i) The measurement of actual effects should be carried out only after seabed production occurs.

UNITED
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UNITED NATIONS
CONVENTION ON THE
LAW OF THE SEA

LOS/PCN/SCN.1/1993/CRP.23
1 February 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY AND
FOR THE INTERNATIONAL TRIBUNAL FOR
THE LAW OF THE SEA
Special Commission 1
Eleventh session
Kingston, Jamaica
22 March-2 April 1993

SUGGESTED AMENDMENTS TO THE DRAFT PROVISIONAL REPORT OF SPECIAL COMMISSION 1 (LOS/PCN/SCN.1/1992/CRP.22)

Submitted by the European Community and its member States

In order to ensure that the provisional report of Special Commission 1 gives a fair, balanced and objective picture of the agreements and disagreements of Special Commission 1, the following corrections are proposed, which would better reflect what took place:

1. Insert in line 14 of paragraph 11 after "and Rev.1-4" within the bracket the following: "and amendments suggested by Indonesia and the EEC to document LOS/PCN/SCN.1/CRP.18/Rev.3 are contained in documents LOS/PCN/SCN.1/CRP.18/Rev.3/Add.1 and 2 respectively".

2. Paragraph 14 should read as follows:

> "In all, the Special Commission completed consideration of 15 working papers (WP) with 11 addenda, and 21 conference room papers (CRP) with 3 addenda and 8 revisions. At the end of each session of the Preparatory Commission, the Chairman of the Special Commission reported to the Plenary on the progress of work during that session. These progress reports, taken together in their chronological order, represent the most authentic sources for assessing the status of work of the Special Commission. The Special Commission also undertook stock-taking exercises periodically (reflected in WP.11, CRP.5 and CRP.13 and in part II of LOS/PCN/L.103) which were discussed but not approved. The

/...

progress reports and the stock-taking reports contain the [most objective] summaries of the deliberations in the Special Commission. They also present the main elements of the views of various delegations on different issues. Appendix I of this report presents a list of the statements of the Chairman to the Plenary, and of the working papers and the conference room papers considered by the Special Commission."

3. The title of section III should read as follows:

"Draft provisional recommendations resulting from the deliberations of Special Commission 1, which could in due time form the basis for further consideration before submission to the International Seabed Authority"

4. Paragraph 15 should read as follows:

"At the end of the deliberations of the Special Commission the Chairman drew up a text trying to bridge the gap between the various positions. This text is annexed to this report. Despite the efforts of the Chairman, those involved in the negotiations are not yet able to find sufficient ground in the main areas."

5. Paragraph 17 should read as follows:

"In almost all of the issues falling within [under] the purview of the Special Commission, there were different views of various groups of delegations, initially. At the end, compromises have been achieved on a [large] number of issues; however, some issues, including [a few] the critical ones, remained unresolved, although there was a [general] feeling among delegations that with respect to [a number of] some of these issues, compromises were possible [close at hand]. At the appropriate time, the positions reached could be the starting point for further consideration of the draft provisional recommendations before submission of the final report to the International Seabed Authority. The draft provisional recommendations annexed to the present report include portions marked with square brackets which constitute the areas where compromises could not be reached, at the time of the writing of this report. (It should be noted that the identification of portions to be marked with square brackets could not be completed at the time of the writing of the report. Further review is needed for this purpose at the time the final report has to be prepared.)"

6. Paragraph 18. In order to indicate the correct reference on the positions, we would propose to modify the first line of the paragraph:

"The initial divergent positions of delegations [on each issue] on the issues that remained unresolved are contained in documents LOS/PCN/SCN.1/1991/CRP.20/Rev.1 and CRP.21 as well as LOS/PCN/SCN.1/1992/CRP.18/Rev.3/Add.1 and 2. These documents are annexed to the present report. The compromise-seeking efforts ..."

7. Paragraph 20. The wording of this paragraph must be in line with provisional conclusion No. 2.

7 bis. Paragraph 21 should read as follows:

> "Issues close to resolution. With respect to the forecasts of the mineral situation, while one view was that the Authority should carry out forecasting on its own, another view was to rely on existing forecasts alone for the sake of cost-effectiveness. The chairman felt that the resolution of this issue is close at hand, along the following lines:
>
> - The Authority should use existing forecasts as far as practicable, and will carry out forecasting only when no existing forecasts serve its purpose."

8. Paragraph 24 should read as follows:

> "Once such applications are submitted, one view was that the applicants should be assisted on a more or less automatic basis, while an opposing view was held that the really deserving applicants can best be helped only after a determination has been made to that affect. It was then agreed that
>
> - The applications have:
>   - to substantiate the potential or actual adverse effects, as the case may be, of seabed production;
>   - to quantify the effects of seabed production on the export earnings or economy of the applicant;
>   - to indicate [investigate] the problems encountered by the applicant directly linked with the effects, in order to determine what measures would assist the applicant best;
> - Certain criteria should be applied in processing the applications; and most importantly, an in-depth investigation, on a case-by-case basis, should be carried out to assess the relationship between seabed production and land-based production of the applicant;
> - In this connection the contents of applications, timing and procedures for submission of applications [procedures for processing applications including criteria to determine whether in-depth investigations would be initiated,] were agreed upon. An indicative outline of the said in-depth investigation was also agreed upon."

9. Paragraph 25 should read as follows:

> "Issues close to resolution. In processing applications, including carrying out the in-depth investigations on a case-by-case basis, the

role of the Authority was extensively debated. One group of delegations maintained that existing organizations assisting developing countries and also active in the mineral sector have the requisite resources, expertise and infrastructures to deal with similar problems, and it is these organisations which should process the applications. The opposing position was that it was the responsibility of the Authority, in particular the Economic Planning Commission, to process the applications. The Chairman felt that the Resolution of this issue might be [close at hand] along the following lines:

- Some kind of cooperative efforts between the Authority and the existing organizations, with the desirable mix of respective roles, can be devised."

10. Paragraph 26. The last two sentences should read as follows:

"A resolution along the following lines has been proposed [is close]:

- A safeguard clause with regard to trigger threshold, with acceptable degrees of restrictiveness and leniency can be devised."

11. Paragraph 27. The first indent should read as follows:

"- Any specific measures or combination of measures (subject to the reservations expressed in paragraph 29) that would assist developing land-based producer States, can be taken."

The fourth indent should read as follows:

"- Assistance to developing land-based producer States should be for the purpose of dealing with changed economic circumstances after seabed production through [including] economic adjustment, diversification, increased efficiency and productivity in the mineral sector, promotion of growth in other sectors."

12. Paragraphs 33-35 should read as follows:

"Issues resolved. There were some divergences of views between one group of delegations which maintained that the data and information needs of the Authority should cover a wide range of items and another group which maintained that the Authority should focus [on a set of items that are directly related to assistance to developing land-based producer States. The issue was ultimately resolved

- by including the categories of data and information and the specific items under the respective categories that are directly related and useful for the purpose of assisting developing land-based producer States] on data and information concerning polymettalic nodules and the metals contained therein, i.e. cobalt, copper, manganese and nickel. Another difference existed with regard to the question whether the Authority itself should collect the relevant data and information or whether it should make use of pertinent data, information, analysis, studies and forecasts of other organizations.

In view of the widespread availability of many pertinent data and information, the manner in which the Authority should utilize, collect and maintain data and information was [also] agreed upon. In this connection, it was agreed that:

- The Authority should develop and maintain cost-effective databases; in developing and maintaining such databases, the Authority has [priority] to use data and information collected and stored by relevant organizations. The Authority itself shall only collect such data and information which are not collected by other organizations. An indicative list of the necessary data and information is given in annex A.

It was also agreed that

- the Authority, at the time when seabed mining becomes imminent or operational, would be in a better position to review the requisite categories, specific items under respective categories, and the degree of detail, and decide thereupon."

13. Paragraph 36. Insert at the end of line 9 after "actually" the word "adversely".

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FOR THE INTERNATIONAL TRIBUNAL FOR
THE LAW OF THE SEA
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SUGGESTED AMENDMENT TO THE DRAFT PROVISIONAL REPORT OF SPECIAL COMMISSION 1 (LOS/PCN/SCN.1/1992/CRP.22)

Submitted by the delegation of the Russian Federation

In order to ensure that the positions taken by the members of the Preparatory Commission in Special Commission 1 are reflected objectively, and taking into account the reservations made by the Russian Federation with regard to each and every one of the preliminary recommendations contained in the draft report, it is proposed that the following additional paragraph 15 (bis) should be included in section III of the report:

> "Nothing in this report, nor the absence of objections to the individual provisions of the draft preliminary recommendations, should be interpreted as prejudging the positions of States parties, which will be determined by whether all of the outstanding issues relating to Part XI of the Convention are resolved in an appropriate manner in the relevant forums."
